

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

S.J.C. NO. \_\_\_\_\_

APPEALS COURT NO. 2023-P-0794

WORCESTER, SS. SUPERIOR COURT DEPT.  
NO. 1385CV00910

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TOWN OF HOLDEN

v.

DEPARTMENT OF CONSERVATION AND RECREATION  
AND THE CITY OF WORCESTER

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DEFENDANT/APPELLANT/APPELLEE CITY OF WORCESTER'S  
APPLICATION FOR DIRECT APPELLATE REVIEW OF JUDGMENT  
AFTER JURY VERDICT FROM THE SUPERIOR COURT FOR  
WORCESTER COUNTY

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*Counsel for City of Worcester:*

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### **Request for Direct Appellate Review**

Defendant/Appellant/Appellee City of Worcester ("Worcester") hereby requests that this Court grant direct appellate review of the rulings, decisions, and the final judgment that entered in the Worcester Superior Court, Civil Action No. 1385CV00910, following an eight-day jury trial over which Judge James Manitsas presided.

### **Statement of Prior Proceedings**<sup>1</sup>

On May 24, 2013, Plaintiff the Town of Holden ("Holden") commenced the underlying action in Worcester Superior Court against Worcester and Defendant Department of Conservation and Recreation ("DCR" or the "Commonwealth"). On June 17, 2013, Holden filed its First Amended Complaint, asserting claims for Declaratory Judgment (vs. Worcester and DCR), Violation of Chapter 286 of the Acts of 1939 (vs. Worcester and DCR), Breach of Contract (vs. DCR), Unjust Enrichment (vs. Worcester), Unconstitutional Tax (vs. Worcester and DCR), and Violation of G. L. c. 66, § 10 (vs. Worcester).

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<sup>1</sup> Pursuant to Mass. R. App. P. 11(b)(6), a copy of the docket entries and a copy of all lower court decisions relevant to the issues on appeal are attached hereto as Exhibit A and Exhibit B.

In 2016, all three parties moved for summary judgment. On January 10, 2018, the Court (Ricciardone, J.) issued an Omnibus Memorandum of Decision and Order on the Parties' Motions for Summary Judgment. The Court entered judgment for Worcester and DCR on Holden's claim for Violation of Chapter 286 of the Acts of 1939 (Count II), while also dismissing the claim against Worcester for Violation of G. L. c. 66, § 10 (Count VI) and the claim against DCR for Unconstitutional Tax (Count V).

Beginning on July 25, 2022, a jury trial was held on Holden's claims for Declaratory Judgment (vs. Worcester and DCR), Breach of Contract (vs. DCR), Unjust Enrichment (vs. Worcester), and Unconstitutional Tax (vs. Worcester). Upon completion of Holden's case in chief, the Court allowed Worcester's Motion for Directed Verdict with respect to the Unconstitutional Tax claim.

On August 4, 2022, the jury returned answers to special verdict questions on Holden's claims for Breach of Contract against DCR and Unjust Enrichment against Worcester. The jury found that DCR had repeatedly and materially breached the terms of its sewer contract with Holden, but that DCR's breaches

were excused by "waiver, condition precedent, contract modification or impossibility." As to the Unjust Enrichment claim, the jury determined that (1) Worcester received a valuable benefit from Holden, (2) Worcester knew or had reason to know that it had received a valuable benefit from Holden, (3) it would be unfair for Worcester to retain the benefit it received from Holden, (4) Holden did not unreasonably delay before bringing an action against Worcester, and (5) Worcester was unjustly enriched by receiving and retaining payments in the amount of \$14,604,237.00.

By Entry of Final Judgment dated April 24, 2023, the Court entered judgment for Worcester and DCR on the Declaratory Judgment claim (Count I) and for DCR on the claim for Breach of Contract {Count II). As to the Unjust Enrichment claim (Count IV), the Court entered judgment for Holden against Worcester in the amount of \$14,604,237.00, in addition to awarding statutory prejudgment interest of \$11,371,958.00 and an award of costs to Holden in the amount of \$2,232.83.

Worcester and Holden filed Notices of Appeal on May 15, 2023 and May 24, 2023, respectively.



### **Statement of Facts**

On December 16, 1999, Holden and the Commonwealth entered into a contract governing the sewage transport rates that Holden would pay to the Commonwealth in exchange for the transport of Holden's wastewater through the Worcester sewer system to a treatment plant located in Millbury (the "1999 Agreement"). Specifically, the 1999 Agreement provided that:

The Town of Holden agrees to pay directly to the [Commonwealth] all proportionate applicable transport costs (as finally determined and agreed to by the Town of Holden) for the transport of sewage through the Rutland-Holden Sewer System to the [treatment plant in Millbury], including the costs of sewage transport through the City of Worcester.

Worcester did not participate in the negotiation of the 1999 Agreement and never agreed to its provisions.

On May 11, 2000, Worcester and the Commonwealth entered into a separate sewer use agreement (the "2000 Agreement"), pursuant to which Worcester receives sewage from the Commonwealth and transports it to the treatment plant in Millbury through Worcester's municipal sewer system. In exchange for Worcester's transport services, the 2000 Agreement requires the Commonwealth to pay Worcester an annual sewer use charge, which is calculated according to a transport

rate formula set forth in the 2000 Agreement at Exhibit F. Holden never signed the 2000 Agreement and was not a party to it.

In 2000, Worcester began providing the Commonwealth with quarterly invoices reflecting the sewage transport charges that were due from the Commonwealth under the 2000 Agreement. The Commonwealth then prepared and forwarded separate invoices to Holden, instructing Holden to remit payment directly to the Commonwealth but to make the check payable to the City of Worcester. Holden complied with this instruction. After receiving Holden's checks, the Commonwealth "log[ged] in receipt of the payment" and "forward[ed] the check directly to Worcester."

Beginning on May 15, 2013, Holden began remitting its quarterly payments to the Commonwealth with accompanying letters indicating that the payments were being made under protest, stating as follows: "Holden disputes Worcester's sewage transport charges that constitute the DCR's [\_\_\_] Quarter Invoice for Sewage Transport Services, and specifically the legality, proportionality, and fairness of such charges under various special acts and prior agreements." Holden

has alleged that the Exhibit F transport rate formula included in the 2000 Agreement resulted overcharges to Holden of more than \$17 million.

**Statement of the Issues of Law Raised by the Appeal**

Worcester's position is that the judgment entered against it for unjust enrichment is erroneous as a matter of law. It is well settled that equitable relief for unjust enrichment is not available when what is claimed to be "unjustly received" has been received under the terms of an enforceable contract, and that a party that receives something to which it is contractually entitled cannot be deemed to have received it unjustly. Worcester further asserts that the Superior Court properly dismissed Holden's claims for Unconstitutional Tax and Declaratory Judgment.

**Argument**

**This Appeal Raises Critical Questions of Law That Should be Submitted for Final Determination by this Court**

The claims asserted in this litigation raise a fundamental question of law: if a party has a contractual right to be paid by someone, can it be deemed to have been "unjustly enriched" by receiving those payments and thereby be held liable in damages to a third party? It appears that Courts in every

jurisdiction across the country have answered this question indirectly, almost universally concluding that someone who is entitled to receive something under the terms of a valid contract cannot be held liable to a third party for unjust enrichment. This rule makes good sense, as it encourages parties to agree to contractual terms at the onset of their relationship and provides greater certainty as to the parties' respective rights and obligations.

But when a third party brings a claim against someone who did sign a contract, seeking damages based on what the contracting party received under the contract, it is well settled that such a claim cannot succeed in law or equity. Whether the doctrine of unjust enrichment in Massachusetts permits such a claim, like the one asserted against Worcester here, warrants this Court's full consideration. Even if this matter is first addressed in the Appeals Court, a subsequent request for Further Appellate Review is highly likely. Given the significance of this matter, this Court's direct review is warranted.

Respectfully submitted,

CITY OF WORCESTER,

By Its Attorneys,

/s/Michael P. Angelini  
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Andrew C. Bartholomew (BBO #696573)  
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**CERTIFICATE OF SERVICE**

I, Andrew C. Bartholomew, hereby certify that I have served a copy of the foregoing on the following by electronic mail this 2<sup>nd</sup> day of August, 2023 to:

Christopher J. Petrini, Esq.  
Michael K. Terry, Esq.  
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**CERTIFICATE OF COMPLIANCE**  
**PURSUANT TO MASS. R. APP. P. 16(k)**

I, Andrew C. Bartholomew, certify that the foregoing application complies with the rules of court that pertain to the filing of applications, including, but not limited to:

Mass. R. App. P. 16(a)(13) (addendum);  
Mass. R. App. P. 16(e) (references to the record);  
Mass. R. App. P. 18 (appendix to the briefs);  
Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents);  
Mass. R. App. P. 21 (redaction).

I further certify that the foregoing application complies with the applicable length limitation in Mass. R. App. P. 20 because it is produced in the monospaced font Courier New at size 12, which is 10 characters per inch, and contains seven (7) total non-excluded pages.

/s/ Andrew C. Bartholomew

Andrew C. Bartholomew

## **EXHIBIT A**



# 1385CV00910 Town of Holden vs. Department of Conservation and Recreation et al

- Case Type:
- Actions Involving the State/Municipality
- Case Status:
- Suspended-Covid-19
- File Date
- 05/24/2013
- DCM Track:
- A - Average
- Initiating Action:
- Tortious Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
- 05/24/2013
- Case Judge:
- 
- Next Event:
- 

[All Information](#) [Party](#) [Subsequent Action/Subject](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

## Docket Information

<a href="#">Docket Date</a>	<i>Docket Text</i>	<a href="#">File Ref Nbr.</a>	<i>Image Avail.</i>
05/24/2013	Complaint & civil action cover sheet filed	1	
05/24/2013	Origin 1, Type D99, Track F.		
05/24/2013	Filing fee paid in the amount of \$275 including \$15.00 surcharge and \$20.00 security fee.		
05/24/2013	Defendant Department of Conservation and Recreation's MOTION for Preliminary Injunction to place disputed funds in escrow; Memo in support; and Affidavit of Paul D Brinkman in support of Motion	2	
05/24/2013	Affidavit of John R Woodsmall III PE Town of Holden Director of Public Works	3	
05/24/2013	Affidavit of Peter L Mello	4	
05/24/2013	Plaintiff Town of Holden's MOTION for Short Order of Notice	5	
05/24/2013	Plaintiff Town of Holden's MOTION for appointment of special process server Francis J Trapasso & Associates	6	
05/24/2013	Motion (P#5) ALLOWED (Dennis P. McManus, Clerk) Notices mailed 5/24/2013		
05/24/2013	Motion (P#6) ALLOWED (Dennis P. McManus, Clerk) Notices mailed 5/24/2013		
05/24/2013	Affidavit of Paul D Brinkman in support of Plff's Motion for Preliminary Injunction	6.1	
05/24/2013	Track changed to A, Origin 1, Type E03.		
05/31/2013	SERVICE RETURNED (order of notice): Department of Conservation and Recreation 5-28-13 (agent person in charge)	7	
05/31/2013	SERVICE RETURNED (order of notice): Attorney General's office	8	
05/31/2013	SERVICE RETURNED (order of notice): City Hall	9	
05/31/2013	Faxed copy of Assented to Motion to change hearing date for Pliffs Motion for PI from 6/4/13 to 6/11/13	10	
06/03/2013	Motion (P#10) ALLOWED as requested (Daniel M. Wrenn, Justice) Notices mailed 6/3/2013		
06/11/2013	Hearing on (P#2) held, matter taken under advisement. (Daniel M. Wrenn, Justice)		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
06/11/2013	Atty Sally A VanderWeele's notice of appearance for Department of Conservation and Recreation		
06/11/2013	Atty Andrew W Koster's notice of appearance for Department of Conservation and Recreation		
06/11/2013	Opposition of Deft, Dept of Conservation and Recreation to Pliffs Motion for PI (Re#2)	10.1	
06/11/2013	Opposition of Deft, City of Worcester to Pliffs Motion for PI (Re#2)	10.2	
06/11/2013	Affidavit of Paula Davison	10.3	
06/11/2013	Rebuttal Affidavit of Paul D Brinkman	10.4	
06/11/2013	Affidavit of Matthew J Labovites	10.5	
06/14/2013	Reply Memorandum of Defendant City of Worcester	11	
06/17/2013	Defendant Department of Conservation and Recreation's MOTION to strike the expert opinion of Paul D Brinkman and reply memorandum by Department of Conservation and Recreation ;	12	
06/17/2013	Authenticating Affidavit of Peter L Mello for the Town of Holden's reply Memo	12.1	
06/17/2013	Amended complaint of Town of Holden	12.2	
06/17/2013	Court received Pliffs reply to Defts' Oppositions to Pliff's Motion for Preliminary Injunction	12.3	
06/17/2013	Plaintiff Town of Holden's MOTION to strike portions of the Affidavits of Paul Davison and Matthew J Labovites filed in court; and Opposition of Defts to Pliffs Motion to strike portions of the Affidavit of Paul Davison	12.4	
06/17/2013	Conditional Motion of Pliff to stay the court's decision on the Town's Motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept filed in court	12.5	
06/17/2013	Defendant Department of Conservation and Recreation's MOTION to strike the index of essential documents for Holden MPI review	12.6	
06/19/2013	Opposition of Deft, DCR to conditional Motion of the Town of Holden to stay the court's decision on the Town's Motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept (Re#12.5)	12.7	
06/21/2013	Pliff's Town of Holden opposition to deft. Department of Conservation and Recreation motions to strike the expert opinion of Paul D. Brinkman and reply and index of essential documents for Holden MPI review (re:#12)	13	
06/26/2013	Motion (P#12) DENIED. Affidavit is accepted for consideration by the court (Daniel M Wrenn, Justice) Notices mailed 7/11/2013		
06/26/2013	Motion (P#12.4) DENIED. Both parties have submitted affidavits with legal conclusions. The court is able to sift thru this issue so all affidavits are accepted and the court will determine the weight to give each affidavit (Daniel M Wrenn, Justice) Notices mailed 7/11/2013		
06/26/2013	Motion (P#12.5) DENIED as this is a new motion and does not comply with Rule 9A (Daniel M Wrenn, Justice) Notices mailed 7/11/2013		
06/26/2013	Motion (P#12.6) DENIED. The court accepts the submission but will not consider the arguments contained in the document (Daniel M Wrenn, Justice) Notices mailed 7/11/2013		
06/28/2013	Motion (P#2) DENIED, See Memorandum of Decision of the Court (Daniel M Wrenn, Justice) Notices mailed 7/11/2013		
07/11/2013	MEMORANDUM AND DECISION on Plaintiff, Town of Holden's Motion for preliminary injunction to place disputed funds in escrow. CONCLUSION: Based on the Court's above stated findings and discussion, the plaintiff, Town of Holden's Motion for Preliminary Injunction is DENIED. (Daniel M Wrenn, Justice) Entered and copies mailed 7/11/13	14	
07/11/2013	ANSWER: Department of Conservation and Recreation(Defendant) (First Amended Complaint)	15	
07/15/2013	Request upon clerk to default (55a) re: City of Worcester by Town of Holden	16	



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
07/16/2013	Default (55a) as to defendant City of Worcester. A motion for an assessment of damages and default judgment pursuant to Mass.R.Civ.P.55(b)2 and subject to Mass.R.Civ.P.54(b) and 55(b)4 as amended by 8/14/2013. Copies mailed 7/16/2013 DEFAULT VACATED 7/18/13	17	
07/16/2013	Defendant City of Worcester's emergency MOTION to set aside entry of default	18	
07/18/2013	Motion (P#18) ALLOWED (Shannon Frison, Justice) Notices mailed 7/19/2013		
07/18/2013	ANSWER: City of Worcester(Defendant)	19	
07/18/2013	COUNTERCLAIM of City of Worcester v Town of Holden		
07/19/2013	Plaintiff's OPPOSITION to Defendant's Emergency Motion to set aside entry of default ; Affidavit of Peter L Mello ; Plaintiff's Request for a hearing (re#18)	20	
08/08/2013	ANSWER by Town of Holden to COUNTERCLAIM of City of Worcester	21	
08/09/2013	Atty Wendy L Quinn's notice of appearance for City of Worcester; Certificate of Service		
09/23/2013	Plaintiff Town of Holden's MOTION for Partial Summary Judgment as to Count 6 of the First Amended Complaint; Memorandum of Law in Support of Plff's motion; City of Worcester's Opposition to Plff's Motion; Consolidated Statement of Material Facts in Support of the Plff's Motion; Joint Appendix Index of Ependix Exhibits; Certification of Notice of Filing; List of documents; Request for Hearing; Certificate of Service	22	
11/12/2013	Hearing on (P#22) held, matter taken under advisement. (Robert L. Ullmann, Justice)		
11/12/2013	JOINT Motion of parties to amend track designation filed in court	23	
11/12/2013	Motion (P#23) ALLOWED (Robert L. Ullmann, Justice) Notices mailed 11/14/2013		
11/13/2013	Motion (P#22) DENIED without prejudice after hearing as not yet ripe for summary judgment. However, on or before 11/27/13, defendant City of Worcester shall provide a written response to plaintiff's March 29, 2013 public records request, setting forth (1) the categories of requested documents that it is prepared to release; (2) the cost of obtaining one copy of said documents; (3) the categories of requested documents that it is not prepared to release; and (4) the grounds on which said documents are being withheld, e.g., attorney-client privilege, pending administrative pleadings. For guidelines, the City should review Lafferty v Martha's Vineyard Commission, Middlesex Civ. No. 03-3397 (Ma. Super Apr 9, 2004) (Robert L. Ullmann, Justice) Notices mailed 11/14/2013		
11/14/2013	Tracking deadlines amended: Motion to amend track from "F" to "A" - All'd; changed in header; Copies mailed 11/14/13		
01/02/2014	Atty C. Vered Jona's notice of appearance for Department of Conservation and Recreation		
01/02/2014	Atty Andrew W Koster's withdrawal of appearance filed re: Department of Conservation and Recreation		
02/20/2014	Plaintiff Town of Holden's Motion to Schedule Conference Under Mass R.Civ.P.16; City of Worcester's Response to Plaintiff's Request; Certification of Notice of Filing; List of Documents;	24	
04/29/2014	Court received List of examples of documents not produced by Worcester, to facilitate during the court's conference under MRCP 16 filed in court	25	
04/30/2014	Motion (P#24) Upon consideration of the parties written submissions and the oral arguments of counsel, it is hereby ORDERED that, on or before May 30, 2014, Worcester shall prepare and serve a supplemental response to the Plaintiff s Requests, and shall search for and produce the following documents to Holden in response to the following specific requests: Request No. 7: Documents sufficient to identify and establish the costs passed on to Holden by Worcester and/or DCR relating to storm water management for the period January 1, 2007 to the present; Request No. 9: Documents sufficient to establish how the Fiscal Year 2014 budget for Worcester s Department of Public Works and Parks ( DPW ) was created and what it		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	encompasses, including, without limitation, all financial transfers or allocations contained or reflected in such budget; Request No. 10: Documents sufficient to establish the actual annual expenditures by Worcester and/or its DPW for sewer services for the period January 1, 2007 to the present; Request No. 11: All final annual budgets for Worcester s DPW for Fiscal Years 2007 through and including 2013, and all accountings and reconciliations of the actual annual expenditures of Worcester s DPW for the same fiscal years; Request No. 12: Documents sufficient to identify and establish, for the years 1999 to the present, the sewer overflows and sewage flows transported through the Worcester sewer system that did not reach the Upper Blackstone Water Pollution Abatement District treatment plant, including, without limitation, all such flows generated by any commercial, wholesale or municipal customers; and Request No. 15: The 525 pages of documents responsive to this request that were identified in the November 27, 2013 letter from Matthew J. Labovites to Peter L. Mello, Esq. The parties shall appear for a further status conference on June 25, 2014 at 2:00 p.m. Any motions that the parties wish the Court to address at that conference shall be filed with the Court no later than June 23, 2014. (Brian A. Davis, Justice). Notices mailed 5/7/2014		
06/09/2014	Atty Brian A. Schwartz's notice of appearance for City of Worcester		
06/19/2014	Plaintiff Town of Holden's MOTION to compel Attendance of Matthew J Labovites at Continued Deposition; Memo in Support Filed	26	
06/19/2014	Defendant City of Worcester's MOTION for a Protective Order for the Continued Deposition of Matthew J Labovites	26.1	
06/19/2014	City of Worcester's OPPOSITION to Plaintiff's Motion to Compel Attendance of Matthew J Labovites at Continued Deposition and Memo in Support of Worcester's Motion for Protective Order; Plaintiff's Memo in OPPOSITION to Worcester's Motion for a Protective Order; Notice of Filing; Request for Hearing; (re#26, 26.1)	26.2	
06/19/2014	Plaintiff Town of Holden's MOTION to compel Documents and ESI and Rule 37 MOTION for Sanctions and Attorneys' Fees; Memo in Support Filed; City of Worcester's OPPOSITION to Motion; Notice of Filing; Request for Hearing	27	
06/23/2014	Defendant City of Worcester's MOTION for leave to File Rule 12 Motion beyond the Tracking Order Deadline; Plaintiff's OPPOSITION to Motion; Plaintiff's Memo in support of Opposition; Notice of Filing; Document Listing;	28	
06/25/2014	Motion (P#26, 26.1 & 27) (See endorsement of Judge Davis) (Brian A. Davis, Justice). Notices mailed 6/30/2014		
06/25/2014	Motion (P#28) ALLOWED. Defendant shall serve any Rule 12(c) motion that it intends to file on or before 8/8/14, and the Plaintiff shall have until 9/12/14 to serve its response. (Brian A. Davis, Justice) Notices mailed 6/30/2014		
07/07/2014	Plff. Town of Holden's MOTION for Letter Rogatory, affid. Atty. Christopher L. Brown & notice of filing pursuant to Sup. Court Rule 9a	29	
07/08/2014	Motion (P#29) ALLOWED (Daniel M. Wrenn, Justice) Notices mailed 7/9/2014		
07/08/2014	Letter Rogatory: (Daniel M. Wrenn, Justice) Original mailed to Petrini & Assoc.		
07/08/2014	Commission to take Out of State Deposition: (Daniel M. Wrenn, Justice) Original mailed to Peterini & Assoc.		
07/31/2014	City of Worcester's Statement Regarding Electronically Stored Information	30	
08/25/2014	ORDER establishing protocol for discovery of electronically stored information (See Order) (Brian A Davis, Justice) Copies mailed 8/25/14	31	
08/27/2014	Defendant City of Worcester's MOTION for Stay of Electronic Discovery; Memo in Support of Motion; Plaintiff's OPPOSITION to Motion; Plaintiff's Memo in support of Opposition; Notice of Filing; List of Documents;	32	
08/28/2014	re# 32 ORIGINAL MOTION FOR A STAY MAILED TO JUDGE DAVIS IN SUFFOLK SUPERIOR COURT		
08/28/2014	ORDER establishing protocol for discovery of electronically stored information (See Order) (Brian A Davis, Justice) Copies mailed 8/28/14	33	

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
09/02/2014	Revised Order Establishing Protocol for Discovery of Electronically Stored Information. (See Revised Order) (Davis,J.) Copies mailed 9/2/14	34	
09/18/2014	Defendant City of Worcester's MOTION for Judgment on the Pleadings; Memo in Support Filed; DCR's Response to City of Worcester's Motion for Judgment on the Pleadings; Town of Holden's OPPOSITION to Motion; Memo in Support of Opposition; Holden's Request for Hearing; Notice of Filing; Document Listing	35	
09/18/2014	Plaintiff Town of Holden's MOTION to strike portions of Worcester's Motion for Judgment on the Pleadings; City of Worcester's OPPOSITION to Motion to Strike (re#35)	35.1	
09/18/2014	Holden's Rule 56(F) MOTION Relative to Worcester's Motion for Judgment on the Pleadings; City of Worcester's OPPOSITION to Plaintiff's Motion ;(re#35)	35.2	
09/18/2014	Motion (P#32) DENIED ( see attached endorsement ) (Davis,, Justice) Notices mailed 9/23/2014		
09/18/2014	Denied Endorsement re: defendant City of Worcester's motion to stay electronic discovery (docket # 32) ( Brian A Davis, J) copies mailed 9/23/14.	36	
09/30/2014	Defendant City of Worcester's emergency MOTION for Clarification and Modification of ESI Order; Memo in Support Filed;	37	
09/30/2014	re# 37 ORIGINAL MOTION FOR A STAY MAILED TO JUDGE DAVIS IN SUFFOLK SUPERIOR COURT		
10/06/2014	Plaintiff's OPPOSITION to the Defendant's Emergency Motion for Clarification and Modification of ESI Order; Memo in Support Filed (emailed to Judge Davis)	38	
11/04/2014	Court received Plaintiff's Request to file abrief reply memorandum to Defendant's Opposition to Plaintiff's Motion to Strike Portions of Worcester's Motion for Judgment on Pleadings	39	
11/04/2014	Motion (P#39) ALLOWED (D Wrenn, Justice) Notices mailed 11/4/2014		
11/17/2014	Plaintiff's Reply to the Defendant City of Worcester's Opposition to Plaintiff's Motion to Strike Portions of Worcester's Motion for Judgment on the Pleadings (re#35)	40	
12/02/2014	Hearing on (P#35) Deft, City of Worcester's Motion for judgment on the pleadings held, matter taken under advisement. (Shannon Frison, Justice)		
12/02/2014	Hearing on (P#35.1) Plffs Motion to strike held, matter taken under advisement. (Shannon Frison, Justice)		
12/02/2014	Hearing on (P#35.2) Plffs Rule 56(F) Motion relative to Defts Motion for judgment on the pleadings held, matter taken under advisement. (Shannon Frison, Justice)		
12/15/2014	Motion (P#37) Preliminary Order regarding Defendant, City of Worcester's Motion for clarification and modification of ESI Order (See Order) (Brian A Davis, Justice). Copies mailed 12/17/2014		
01/20/2015	Defendant's Report on the status of the dispute regarding electronically stored information (ESI)	41	
01/20/2015	Plaintiff's Report regarding the ESI Consultants' meeting and remaining disputed ESI Issues between Holden and Worcester	42	
02/03/2015	Defendant Department of Conservation and Recreation's emergency MOTION for an Extension to Complete ESI Discovery in light of the Blizzard	43	
02/11/2015	Motion (P#43) ALLOWED (Daniel M. Wrenn, Justice) Notices mailed 2/12/2015		
03/10/2015	ORDER Regarding Defendant City Of Worcestre's Motion for Clarification and Modification of ESI Order (re:P#37); Worcester's Motion for Clarification is ALLOWED in Part. (See Order) (Brian A. Davis, Justice) copies mailed 3/10/2015.	44	
03/23/2015	MEMORANDUM OF DECISION AND ORDER ON WORCESTER'S MOTION FOR JUDGMENT ON THE PLEADINGS - For the foregoing reasons, the Defendant's Motion for Judgment on the Pleadings is DENIED. (Shannon Frison, Justice) Entered and Copies mailed 3/23/15	45	



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
05/20/2015	General correspondence regarding Plaintiff Town of Holden Status Report Pursuant to Court's Order Dated Marach 9, 2015	45.1	
05/21/2015	Received from Defendant Department of Conservation and Recreation: Answer to original complaint;	46	
05/21/2015	General correspondence regarding City of Worcester's status report on ESI	47	
08/12/2015	General correspondence regarding Plaintiff Town of Holden Status Report	48	
08/17/2015	General correspondence regarding City of Worcester's Status Report on ESI	49	
08/17/2015	ORDER: REGARDING HEARING ON FURTHER COMPLIANCE WITH ESI ORDER- (See Order) Copies mailed 8/17/15	50	 <a href="#">Image</a>
01/08/2016	Defendant City of Worcester's EMERGENCY Motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's Counterclaims	51	
01/08/2016	Defendant City of Worcester, Department of Conservation and Recreation's EMERGENCY Joint Motion to extend time for Discovery and Summary Judgment Deadlines	52	
01/08/2016	General correspondence regarding letter from Atty Christopher Petrini re: request for leave to file memorandum of law in support of Plff's forthcoming Motion for summary judgment	52.1	
01/12/2016	Opposition to paper #51.0 Defendants' Emergency Joint Motion to extend discovery and summary judgment deadlines and Worcester's Emergency Motion for leave for an enlargement of time for serving an opposition to Plaintiff's Motion for summary judgment as to Worcester's Counterclaim filed by Town of Holden(re: p# 51, 52)	53	
01/12/2016	Affidavit of Peter L Mello Esq.	53.1	
01/12/2016	Request for hearing filed  Applies To: Town of Holden (Plaintiff)	53.2	
01/13/2016	The following form was generated:  Notice to Appear Sent On: 01/13/2016 10:01:53		
01/21/2016	Plaintiff Town of Holden's Motion for summary judgment, MRCP 56 as to the City of Worcester's Counterclaim	54	
01/21/2016	Town of Holden's Memorandum in support of Motion for Summary Judgment	54.1	
01/21/2016	The parties' Consolidated Statement of Material Facts regarding the Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims	54.2	
01/21/2016	Affidavit of Christopher L Brown	54.3	
01/21/2016	Plaintiff Town of Holden's Joint Appendix of Exhibits Notice of Filing	54.4	
01/28/2016	Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 01/28/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
02/01/2016	Endorsement on Motion for summary judgment, MRCP 56 (#54.0): Withdrawn Withdrawn by the moving party.  Notices mailed 2/1/16		
03/21/2016	General correspondence regarding Court received Documents from Atty Brown re: outstanding issues	55	
04/13/2016	Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 05/26/2016 03:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
04/13/2016	The following form was generated:  Notice to Appear Sent On: 04/13/2016 09:30:23		
04/19/2016	Endorsement on Request for leave (#52.1): ALLOWED ALLOWED. The Defendant may, but are not required to submit responses of equal length.		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	Notices Mailed 4/21/16		
04/21/2016	Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 06/09/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
04/21/2016	The following form was generated:  Notice to Appear Sent On: 04/21/2016 15:39:47		
04/21/2016	Attorney appearance On this date Christopher Lee Brown, Esq. added for Plaintiff Town of Holden		
04/21/2016	The following form was generated:  Notice to Appear Sent On: 04/21/2016 15:44:39		
05/20/2016	Plaintiff Town of Holden's Assented to Motion to Conform Tracking Order Deadlines	56	
05/20/2016	Endorsement on Motion to Conform Tracking Order Deadlines (#56.0): ALLOWED (See Order of the Court this day) Tracking order amended. Notices mailed 5/31/16		
05/20/2016	ORDER: Tracking Order (See Order) Copies mailed 5/31/16	57	
06/06/2016	Plaintiff Town of Holden's Joint Motion to change tracking order by all parties	58	<a href="#">Image</a>
06/15/2016	Endorsement on Motion to change track (#58.0): Other action taken See order of Judge Davis dated 6/15/16.  (Attest: Laurie Jurgiel Asst Clerk) Notices Mailed 6/17/16		
06/15/2016	ORDER: Order regarding Motion to Change Tracking Order by All Parties (Docket No. 58.0)  (See attached Order) Copies Mailed 6/17/16	59	 <a href="#">Image</a>
06/17/2016	The following form was generated:  Notice to Appear Sent On: 06/17/2016 08:33:27		
06/17/2016	Event Result: The following event: Motion Hearing scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
06/17/2016	Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
06/23/2016	Event Result: The following event: Motion Hearing scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
06/23/2016	Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
06/24/2016	The following form was generated:  Notice to Appear for Final Pre-Trial Conference Sent On: 06/24/2016 09:18:58		
06/24/2016	Event Result: The following event: Final Trial Conference scheduled for 11/17/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
06/28/2016	ORDER: Order Following Status Copnference (See attached order)  Copies Mailed 6/28/16	60	 <a href="#">Image</a>
08/05/2016	Defendant Department of Conservation and Recreation's Request for Leave to File a Memorandum of Law in support of Defendant's Motion for Summary Judgment	61	
08/15/2016	Endorsement on Request for Leave to File a Memorandum of Law in support of Defendant's Motion for Summary Judgment (#61.0): ALLOWED Notices mailed 8/15/16		
08/19/2016	Defendant City of Worcester's Motion for Leave to disclose expert beyond Deadline	62	
08/19/2016	Opposition to to Motion for Leave to Disclose expert beyond Deadline filed by	62.1	
08/19/2016	Request for hearing filed  Applies To: City of Worcester (Defendant)	62.2	
08/19/2016	Rule 9A notice of filing  Applies To: City of Worcester (Defendant)	62.3	
08/19/2016	Rule 9A list of documents filed.  Applies To: City of Worcester (Defendant)	62.3	
08/24/2016	Endorsement on Motion for Leave to Disclose Expert Beyond Deadline (#62.0): ALLOWED As requested. Notices mailed 8/24/16		
09/02/2016	General correspondence regarding letter requesting leave to file a Memo of Law of up to 30 pages in length	63	
09/07/2016	Endorsement on Request for Leave to file a Memo of Law of up to 30 pages in length (#63.0): ALLOWED Notices mailed 9/9/16		
09/24/2016	Department of Conservation and Recreation's Request for leave to leave to file in excess of 12 pages	64	
09/24/2016	Endorsement on Motion to file a Reply of up to 12 pages (#64.0): ALLOWED		
10/06/2016	Opposition to Request of Defendant Department of Conservation and Recreation's Request to Submit Reply Memorandum in Excess of Five pages in Length filed by Town of Holden	63.1	
10/11/2016	Plaintiff Town of Holden's Motion for Summary Judgment  Applies To: City of Worcester (Defendant)	65	
10/11/2016	Town of Holden's Memorandum in support of Motion for Summary Judgment as to City of Worcester's Counterclaims	65.1	
10/11/2016	Opposition to to Holdens Motion for Summary Judgment as to City of Worcester's Counterclaims ( re #65) filed by City of Worcester	65.2	
10/11/2016	Brief filed: Reply Holden's Reply to City of Worcester's Opposition to Holden's Motion for Summary Judgment as to City of Worcester's Counterclaims  Applies To: Town of Holden (Plaintiff)	65.3	
10/11/2016	Statement of Undisputed Facts  ( parties consolidated Statement of material facts)  Applies To: Town of Holden (Plaintiff)	65.4	
10/11/2016	Town of Holden's Joint Appendix of Exhibits  Applies To: Town of Holden (Plaintiff); City of Worcester (Defendant)	65.5	
10/11/2016	Rule 9A notice of filing  Applies To: Town of Holden (Plaintiff); City of Worcester (Defendant)	65.6	
10/11/2016	Opposition to to Defendant DCR Motion to strike portion of plaintiffs statement of material facts filed by Town of Holden	67.1	
10/11/2016	Opposition to to Defendant Department of conservation and recreation Motion for summary judgment filed by	72.3	





<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/11/2016	Rule 9A notice of filing  Applies To: Town of Holden (Plaintiff)	76.3	
10/11/2016	Plaintiff Town of Holden's Motion for Summary Judgment as to Holden's Claims	66	
10/11/2016	Brief filed: Reply in support of Defendants ( Department of Conservation and recreation's ) Motion for Summary judgment  DCRS REPLY  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72.6	
10/11/2016	Town of Holden's Memorandum in support of Town of Holden's Summary Judgment as to Holden's Claims	66.1	
10/11/2016	Rule 9A list of documents filed.  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	74.2	
10/11/2016	Opposition to Town of Holden's Summary Judgment as to Holden's Claims ( re#66) filed by City of Worcester  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	66.2	
10/11/2016	Rule 9A notice of filing  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	74.3	
10/11/2016	Opposition to Town of Holden's Summary Judgment as to Holden's Claims ( re#66) filed by Department of Conservation and Recreation  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	66.3	
10/11/2016	Opposition to City of Worcester's Summary judgment filed by Town of Holden	75.2	
10/11/2016	Brief filed: Reply to City of Worcester's Opposition to Town of Holden's Summary Judgment as to Holden's Claims  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	66.4	
10/11/2016	Brief filed: Reply to DCRS Opposition to Town of Holden's Summary Judgment as to Holden's Claims  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	66.5	
10/11/2016	Defendant Department of Conservation and Recreation's Motion to Strike a portion of Plaintiffs Statement of facts  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	67	
10/11/2016	General correspondence regarding City of Worcester's Notice of Joinder of DCRs Motion to strike Portions of Holden's statement of Material facts.  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	67.2	
10/11/2016	Plaintiff Town of Holden's Motion to Strike certain Defendant City of Worcester statement of fact, supporting Exhibit and portions of the City of Worcester's MEMO of Law in opposition to Holden's Motion for Summary judgment.  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	68	
10/11/2016	Opposition to Plaintiffs Motion to Strike the Markus Affidavit filed by City of Worcester WORCESTERS CROSS MOTION to Strike.  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	68.1	
10/11/2016	Statement of Undisputed Facts	69	



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	- Parties statement of material facts regarding Holden's Motion for Summary Judgment as to Holden's Claims ( Re #66 )  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)		
10/11/2016	Town of Holden's Joint Appendix of Exhibits ( 1-55 )  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	70	
10/11/2016	Rule 9A notice of filing  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	71	
10/11/2016	Defendant Department of Conservation and Recreation's Motion for Summary Judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72	
10/11/2016	Affidavit of Assistant Attorney General Andrew W Koster in support of The Department  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72.1	
10/11/2016	Department of Conservation and Recreation's Memorandum in support of The Department of Conservation Motion for Summary judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72.2	
10/11/2016	Affidavit of Christopher Brown in Support of Plaintiff Town of Holden Oppositions to Defendants ( Department of Conservation and recreation's ) Motion for Summary judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72.4	
10/11/2016	Town of Holden's Memorandum in support of Plaintiff Town of Holden Opposition to Defendants ( Department of Conservation and recreation's ) Motion for Summary judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72.5	
10/11/2016	Statement of Undisputed Facts  ( Department of Conservation and Recreations )  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	72.7	
10/11/2016	Defendant Department of Conservation and Recreation's Motion to Strike a Portion of Town of Holden's Additional material facts  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	73	
10/11/2016	Plaintiff Town of Holden's Motion to strike certain defendant Department of conservation and recreations statements of fact and supporting exhibits to defendant Department of conservation and recreations motion for summary judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	74	
10/11/2016	Opposition to to plaintiffs motion to strike certain defendant Department of conservation and recreations statements of fact and supporting exhibits to defendant Department of conservation and recreations motion for summary judgment filed by Department of Conservation and Recreation  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	74.1	
10/11/2016	Defendant City of Worcester's Motion for Summary judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	75	







<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/11/2016	City of Worcester's Memorandum in support of City of Worcester's Summary judgment  Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)	75.1	
10/11/2016	Opposition to to Defendants City of Worcester's Summary judgment filed by	75.2	
10/11/2016	Town of Holden's Memorandum in support of Defendants City of Worcester's Summary judgment  Applies To: Town of Holden (Plaintiff)	75.3	
10/11/2016	Brief filed: Reply to Holden's Opposition to Worcester's Motion for Summary Judgment  Applies To: Town of Holden (Plaintiff)	75.4	
10/11/2016	Statement of Undisputed Facts  ( City of Worcester's)  Applies To: Town of Holden (Plaintiff)	75.5	
10/11/2016	Plaintiff Town of Holden's Motion to Strike certain defendant City of Worcester Statements of fact and supporting Exhibits to Defendant City of Worcester's Motion for Summary Judgment  Applies To: Town of Holden (Plaintiff)	76	
10/11/2016	Opposition to to Plaintiffs Motion to Strike certain defendant City of Worcester Statements of fact and supporting Exhibits to Defendant City of Worcester's Motion for Summary Judgment filed by WORCESTERS CROSS MOTION to strike  Applies To: Town of Holden (Plaintiff)	76.1	
10/11/2016	Rule 9A list of documents filed.  Applies To: Town of Holden (Plaintiff)	76.2	
10/11/2016	Department of Conservation and Recreation, City of Worcester's Appendix of Exhibits Volume 1 and 2  Applies To: Town of Holden (Plaintiff)	77	
10/17/2016	Opposition to to DCRS Motion to strike a portion of Town of Holden's Additional material Facts with Exhibits A and B ( re #74) filed by	78	
10/17/2016	Opposition to City of Worcester Cross Motion to strike and reply to City of Worcester's Opposition to plaintiffs Motion to strike certain statement of facts and supporting exhibits to Worcester Motion for Summary Judgment( re #76.1) filed by	79	
10/17/2016	Opposition to to Worcester's Cross motion to strike and reply to City of Worcester's Opposition to plaintiffs Motion to strike the Markus Affidavit and Markus Opinion Materials.( Re #68.1) filed by	80	
10/17/2016	Opposition to to City of Worcester Notice of joinder to DCRs Motion to strike portions of Holden's Statement of facts ( re#67.2) filed by	81	
11/14/2016	Department of Conservation and Recreation's Motion for leave to file an amended answer	82	
11/14/2016	Opposition to DCR's Motion for leave to file an amended answer filed by Town of Holden	82.1	
11/14/2016	Rule 9A list of documents filed.  Notice of Filing;	82.2	
11/17/2016	Matter taken under advisement The following event: Rule 56 Hearing scheduled for 11/17/2016 02:00 PM has been resulted as follows: Result: Held - Under advisement		
12/12/2016	Plaintiff Town of Holden's Motion to continue / reschedule an event	83	
12/12/2016	Endorsement on Motion to continue / reschedule an event (#83.0): ALLOWED Attest: Laurie Jurgiel Asst. Clerk  Notices Mailed 12/14/2016		
03/13/2017	Attorney appearance On this date Katherine B. Dirks, Esq. added for Defendant Department of Conservation and Recreation		
08/02/2017	Attorney appearance On this date Brian A Schwartz, Esq. dismissed/withdrawn as Private Counsel for Defendant City of		


<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	Worcester		
12/29/2017	Endorsement on Motion to Strike a Portion of Plaintiff's Statement of Facts (#67.0): DENIED Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion to Strike a Portion of Town of Holden's Additional Material Facts (#73.0): DENIED Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion to Strike Certain Defendant City of Worcester Statement of Fact, Supporting Exhibit and Portions of Worcester's Memorandum of Law in Opposition to Holden's Motion for Summary Judgment (#68.0): DENIED Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion to Strike Certain Defendant Department of Conservation and Recreation Statements of Fact and Supporting Exhibits to Defendant Department of Conservation and Recreation's Motion for Summary Judgment (#74.0): DENIED Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion to Strike Certain Defendant City of Worcester Statements of Fact and Supporting Exhibits to Defendant City of Worcester's Motion for Summary Judgment (#76.0): DENIED Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion for Leave to File an Amended Answer (#82.0): DENIED Essentially for reasons expressed in the opposition hereto; see also "omnibus memorandum of decision and order on motion for summary judgment", this date. Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion for Summary Judgment as to City of Worcester's Counterclaims (#65.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion for Summary Judgment as to Holden's Claims (#66.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion for Summary Judgment by Defendant Conservation and Recreation (#72.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
12/29/2017	Endorsement on Motion for Summary Judgment by Defendant City of Worcester (#75.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18  Judge: Ricciardone, Hon. David		
01/10/2018	MEMORANDUM & ORDER:  ON PARTIES' MOTIONS FOR SUMMARY JUDGMENT (OMNIBUS)- ORDER: For the foregoing reasons, this court hereby ORDERS that: Holden's Motion for Summary Judgment as to Worcester's counterclaims (Paper#65) is ALLOWED. Holden's Motion for Summary Judgment as to its claims against DCR (Paper#66) is DENIED. As to Holden's claims against Worcester (Paper#66), Holden's Motion for Summary Judgment is DENIED. The DCR's Motion for Summary Judgment as to Holden's claims (Paper#72) is ALLOWED, as to Count II (violation of Chapter 286) and Count V (unconstitutional tax), and is DENIED, as to all remaining counts against it. Worcester's Motion for Summary Judgment as to its counterclaims (Paper#75) is DENIED. As to Holden's claims against it, Worcester's Motion for Summary Judgment (Paper#75) is ALLOWED, as to Count II (violation of Chapter 286), and is DENIED, as to all remaining counts against it. Entered and Copies mailed 1/10/18  Judge: Ricciardone, Hon. David	84	 <a href="#">Image</a>
03/26/2018	Defendant Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment	85	 <a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
03/26/2018	Department of Conservation and Recreation's Memorandum in support of Motion for Reconsideration of the Order on Summary Judgment	85.1	 <a href="#">Image</a>
03/26/2018	Opposition to to Defendant Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment filed by Town of Holden	85.2	 <a href="#">Image</a>
03/26/2018	Town of Holden's Memorandum in support of Plaintiff Town of Holden's Opposition to Defendant Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment	85.3	 <a href="#">Image</a>
03/26/2018	Department of Conservation and Recreation's Reply Memorandum in support of its Motion for Reconsideration of the Order on Summary Judgment	85.4	 <a href="#">Image</a>
03/26/2018	Rule 9A list of documents filed.	85.5	
03/26/2018	Rule 9A notice of filing	85.6	
04/11/2018	Plaintiff Town of Holden's Motion for Partial Reconsideration of Summary Judgment Order	86	 <a href="#">Image</a>
04/11/2018	Town of Holden's Memorandum in support of Plaintiff Town of Holden's Motion for Partial Reconsideration of Summary Judgment Order	86.1	 <a href="#">Image</a>
04/11/2018	Opposition to the Plaintiff's Motion for Reconsideration filed by Department of Conservation and Recreation	86.2	 <a href="#">Image</a>
04/11/2018	Opposition to Holden's Motion for Partial Reconsideration of the Summary Judgment Order filed by City of Worcester	86.3	 <a href="#">Image</a>
04/11/2018	Plaintiff Town of Holden's Reply to the Defendants' Oppositions to Holden's Motion for Partial Reconsideration of Summary Judgment Order	86.4	 <a href="#">Image</a>
04/12/2018	Rule 9A notice of filing Pursuant to Superior Court Rule 9A	86.5	
04/23/2018	Defendant City of Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order	87	 <a href="#">Image</a>
04/23/2018	City of Worcester's Memorandum in support of City of Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order	87.1	 <a href="#">Image</a>
04/23/2018	Opposition to Defendant City of Worcester's Motion for Partial Reconsideration of Summary Judgment Order filed by Town of Holden	87.2	 <a href="#">Image</a>
04/23/2018	Town of Holden's Memorandum in support of Plaintiff Town of Holden's Opposition to Defendant City of Worcester's Motion for Partial Reconsideration of Summary Judgment Order	87.3	 <a href="#">Image</a>
04/23/2018	Defendant City of Worcester's Reply to Holden's Opposition to Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order	87.4	 <a href="#">Image</a>
04/23/2018	Rule 9A notice of filing	87.5	
04/23/2018	Rule 9A list of documents filed.	87.6	
04/30/2018	General correspondence regarding MOTIONS P# 85, 86 & 87 SENT TO RICCIARDONE, J		
05/11/2018	Plaintiff Town of Holden's Motion to schedule conference under Mass. R. Civ. P. 16	88	 <a href="#">Image</a>
05/11/2018	Defendant City of Worcester's Response to plaintiffs notion to schedule a final pre-trial conference	88.1	 <a href="#">Image</a>
05/11/2018	Plaintiff Town of Holden's Reply to the defendant City of Worcester's response to plaintiffs motion to schedule conference under Mass. R. Civ. P. 16	88.2	 <a href="#">Image</a>
05/11/2018	General correspondence regarding affidavit of compliance and NO receipt of Opposition under Superior Court Rule 9A	88.3	 <a href="#">Image</a>
05/11/2018	Affidavit of compliance with Superior Court Rule 9A and certificate of notice of filing Applies To: Town of Holden (Plaintiff)	88.4	 <a href="#">Image</a>
05/21/2018	Endorsement on Motion to Schedule Conference Under Mass. R. Civ. P. 16 (#88.0): DENIED Without prejudice at this time pending decision on the outstanding dispositive motions. Notices mailed 5/24/18  Judge: Reardon, Jr., Hon. James G		 <a href="#">Image</a>



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
11/29/2018	General correspondence regarding Court received Correspondence addressed to Judge Ricciardone at the Hampden Superior Court from Attorney Petrini Re: Cross-Motions for Reconsideration	89	
04/22/2019	Endorsement on Motion for Reconsideration of the Order on Summary Judgment (Defendant Department of Conservation and Recreation) (#85.0): DENIED See court's omnibus memorandum of decision and order. Notices mailed 4/22/19  Judge: Ricciardone, Hon. David		
04/22/2019	Endorsement on Motion for Partial Reconsideration of Summary Judgment Order (#86.0): DENIED See court's omnibus memorandum of decision and order. Notices mailed 4/22/19  Judge: Ricciardone, Hon. David		
04/22/2019	Endorsement on Motion for Partial Reconsideration of the Summary Judgment Decision and Order (City of Worcester) (#87.0): DENIED See court's omnibus memorandum of decision and order. Notices mailed 4/22/19  Judge: Ricciardone, Hon. David		
04/22/2019	MEMORANDUM & ORDER:  ON PARTIES' MOTIONS FOR RECONSIDERATION (P.#s 85,86, and 87)- ORDER: For the foregoing reasons, this court hereby ORDERS that: The Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment (Paper# 85) is DENIED. Town of Holden's Motion for Partial Reconsideration of the Order on Summary Judgment (Paper# 86) is DENIED. City of Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order (Paper# 87) is DENIED. The court further ORDERS that this matter be scheduled for Rule 16 conference within thirty (30) days. Entered and Copies mailed 4/22/19  Judge: Ricciardone, Hon. David	90	 <a href="#">Image</a>
04/22/2019	The following form was generated:  Notice to Appear Sent On: 04/22/2019 12:52:55		
04/24/2019	Attorney appearance On this date Andrew Walter Koster, Esq. dismissed/withdrawn as Private Counsel for Defendant Department of Conservation and Recreation		
04/24/2019	Attorney appearance On this date Peter D McCarthy, Esq. added for Defendant Department of Conservation and Recreation		
05/15/2019	Event Result:: Rule 16 Conference scheduled on: 05/23/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
05/15/2019	The following form was generated:  Notice to Appear Sent On: 05/15/2019 10:18:46		
06/11/2019	Event Result:: Rule 16 Conference scheduled on: 06/11/2019 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
06/11/2019	Event Result:: Rule 16 Conference scheduled on: 06/11/2019 02:00 PM Has been: Held as Scheduled Comments: FTR Room 19 Hon. David Ricciardone, Presiding Staff: Gregory Benoit, Assistant Clerk Magistrate Gail Dempsey, Assistant Clerk Magistrate		
06/11/2019	The following form was generated:  Notice to Appear for Final Pre-Trial Conference Sent On: 06/11/2019 14:38:45		
06/19/2019	Attorney appearance On this date Michael K Terry, Esq. added for Plaintiff Town of Holden		 <a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
07/29/2019	Attorney appearance On this date Kevin M Gould, Esq. added for Defendant City of Worcester		
01/10/2020	Defendant Department of Conservation and Recreation's Assented to Motion to Reschedule the Final Pretrial Conference	91	
01/17/2020	Endorsement on Motion to Reschedule the Final Pre-Trial Conference (#91.0): ALLOWED The Final Pre-Trial Conference is continued from 2/11/20 to 3/5/20. Notices mailed 1/21/2020  Judge: Krupp, Hon. Peter B		 
01/21/2020	Event Result:: Final Pre-Trial Conference scheduled on: 02/11/2020 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Daniel M Wrenn, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
01/21/2020	The following form was generated:  Notice to Appear for Final Pre-Trial Conference Sent On: 01/21/2020 12:05:16		
03/02/2020	Joint Pre-Trial Memorandum filed:  (final) (E-FILED)	92	
03/04/2020	Event Result:: Final Pre-Trial Conference scheduled on: 03/05/2020 02:00 PM Has been: Not Held For the following reason: Transferred to another session Hon. Daniel M Wrenn, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
03/05/2020	Event Result:: Final Pre-Trial Conference scheduled on: 03/05/2020 02:00 PM Has been: Held as Scheduled Comments: FTR - 2:45 PM Hon. Daniel M Wrenn, Presiding Staff: Cheryl Riddle, Assistant Clerk Magistrate		
03/05/2020	The following form was generated:  Notice to Appear Sent On: 03/05/2020 14:54:22		
03/19/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 03/26/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
03/19/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Final Trial Conference scheduled on: 05/05/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
03/19/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Jury Trial scheduled on: 05/12/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
03/19/2020	The following form was generated:  Notice to Appear Sent On: 03/19/2020 14:15:36		
04/16/2020	Attorney appearance On this date Peter D McCarthy, Esq. dismissed/withdrawn for Defendant Department of Conservation and Recreation		



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
05/08/2020	The following form was generated:  Notice to Appear Sent On: 05/08/2020 10:15:35		
05/08/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 06/02/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/10/2020	Plaintiff, Defendant Town of Holden, Department of Conservation and Recreation's Joint, PROPOSED Request for Case Management Order	93	 <a href="#">Image</a>
07/16/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 07/23/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/23/2020	Event Result:: Conference to Review Status scheduled on: 07/23/2020 12:00 PM Has been: Held as Scheduled Comments: FTR- rm 25 Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:33 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey & Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:34 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:34 Notice Sent To: Christopher Lee Brown, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:34 Notice Sent To: Michael K Terry, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:35 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:35 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:35		


























<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Notice Sent To: David M Moore, Esq. City of Worcester Law Department 455 Main St, Worcester, MA 01608		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:36 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:36 Notice Sent To: Kevin M Gould, Esq. City of Worcester Law Department 455 Main St City Hall Rm 301, Worcester, MA 01608		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:42:37 Notice Sent To: File Copy		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:24 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey & Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:24 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:24 Notice Sent To: Christopher Lee Brown, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:25 Notice Sent To: Michael K Terry, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:25 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:25 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:26 Notice Sent To: David M Moore, Esq. City of Worcester Law Department 455 Main St, Worcester, MA 01608		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:26 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608		
07/27/2020	The following form was generated:		


<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	Notice to Appear Sent On: 07/27/2020 13:43:27 Notice Sent To: Kevin M Gould, Esq. City of Worcester Law Department 455 Main St City Hall Rm 301, Worcester, MA 01608		
07/27/2020	The following form was generated:  Notice to Appear Sent On: 07/27/2020 13:43:27 Notice Sent To: File Copy		
01/08/2021	Plaintiff, Defendant Town of Holden, Department of Conservation and Recreation, City of Worcester's Joint Request for Status Conference Regarding Trial Date (E-FILED)	94	 <a href="#">Image</a>
02/03/2021	The following form was generated:  Notice to Appear Sent On: 02/03/2021 09:36:28 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey & Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702 Notice Sent To: Christopher Lee Brown, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Michael K Terry, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108 Notice Sent To: David M Moore, Esq. 30 Kanes Crossing, Worcester, MA 01609 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608 Notice Sent To: Kevin M Gould, Esq. City of Worcester Law Department 455 Main St City Hall Room 301, Worcester, MA 01608		
02/25/2021	Event Result:: Conference to Review Status scheduled on: 03/01/2021 11:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Shannon Frison, Presiding		
04/22/2021	Event Result:: Conference to Review Status scheduled on: 04/22/2021 12:00 PM Has been: Held via Video/Teleconference Comments: FTR - rm 25 Hon. David Hodge, Presiding		
04/22/2021	Event Result:: Final Trial Conference scheduled on: 04/27/2021 02:00 PM Has been: Not Held For the following reason: By Court prior to date Hon. David Hodge, Presiding		
04/22/2021	Event Result:: Jury Trial scheduled on: 05/03/2021 09:00 AM Has been: Not Held For the following reason: By Court prior to date Hon. David Hodge, Presiding		
06/08/2021	Attorney appearance On this date Kevin M Gould, Esq. dismissed/withdrawn for Defendant City of Worcester		
06/09/2021	Defendant City of Worcester's Notice of Withdrawal of Appearance (E-FILED)  Applies To: Gould, Esq., Kevin M (Attorney) on behalf of City of Worcester (Defendant)		 <a href="#">Image</a>
06/21/2021	Event Result:: Trial Assignment Conference scheduled on: 06/21/2021 10:00 AM Has been: Held via Video/Teleconference Comments: FTR - rm 25 Hon. David Hodge, Presiding		
06/22/2021	Scheduled: Event: Jury Trial Date: 07/25/2022 Time: 09:00 AM Result: Held as Scheduled		
06/22/2021	The following form was generated:  Notice to Appear Sent On: 06/22/2021 14:58:38		






<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	<p>Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702</p> <p>Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey and Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169</p> <p>Notice Sent To: Christopher Lee Brown, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702</p> <p>Notice Sent To: Michael K Terry, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702</p> <p>Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108</p> <p>Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108</p> <p>Notice Sent To: David M Moore, Esq. N.A. 30 Kanes Crossing, Worcester, MA 01609</p> <p>Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608</p>		
06/22/2021	<p>The following form was generated:</p> <p>Notice to Appear</p> <p>Sent On: 06/22/2021 14:59:27</p> <p>Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702</p> <p>Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey and Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169</p> <p>Notice Sent To: Christopher Lee Brown, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702</p> <p>Notice Sent To: Michael K Terry, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702</p> <p>Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108</p> <p>Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108</p> <p>Notice Sent To: David M Moore, Esq. N.A. 30 Kanes Crossing, Worcester, MA 01609</p> <p>Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608</p>		
07/07/2021	Plaintiff Town of Holden's Assented to Motion for Clarification of Overall Case Management Order	95	
07/14/2021	Endorsement on Motion for Clarification of Overall Case Management Order (#95.0): ALLOWED Notices mailed 7/15/21  Judge: Wrenn, Hon. Daniel M		 
07/14/2021	ORDER: CASE MANAGEMENT ORDER- (See Order) Copies mailed 7/15/21  Judge: Wrenn, Hon. Daniel M	96	
03/25/2022	Attorney appearance On this date Jared John Madison, Esq. added for Defendant City of Worcester		
03/25/2022	Attorney appearance On this date Wendy L Quinn, Esq. dismissed/withdrawn as Private Counsel for Defendant City of Worcester		 
04/08/2022	Plaintiff Town of Holden's Submission of Withdrawal of Appearance  (E-FILED)  Applies To: Mello, Esq., Peter Louis (Attorney) on behalf of Town of Holden (Plaintiff)		 
05/05/2022	Plaintiff Town of Holden's Notice of Withdrawal of Appearance of Christopher L. Brown (E-FILED)  Applies To: Brown, Esq., Christopher Lee (Attorney) on behalf of Town of Holden (Plaintiff)		 
05/11/2022	Attorney appearance electronically filed.		
05/11/2022	Attorney appearance electronically filed.		 
05/11/2022	Attorney appearance On this date Andrew Bartholomew, Esq. added for Defendant City of Worcester		
05/11/2022	Attorney appearance On this date Michael P Angelini, Esq. added for Defendant City of Worcester		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/06/2022	Attorney appearance On this date Jared John Madison, Esq. dismissed/withdrawn for Defendant City of Worcester		 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to preclude testimony of DCR's listed witness, Mark Smith. (E-FILED)	97	 <a href="#">Image</a>
07/05/2022	Opposition to the Town of Holden's motion in limine to preclude testimony of DCR's listed witness, Mark Smith. (E-FILED) filed by Department of Conservation and Recreation	97.1	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to preclude Worcester Official and Worcester Proffered expert Kenneth Croft from offering expert opinions for failure to properly and timely identify them in answers to interrogatories. (E-FILEDF)	98	 <a href="#">Image</a>
07/05/2022	Opposition to plaintiffs motion in limine to preclude Worcester Official and Worcester Proffered expert Kenneth Croft from offering expert opinions for failure to properly and timely identify them in answers to interrogatories. (E-FILED) filed by City of Worcester	98.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  Plaintiffs reply to Defendant City of Worcester's opposition to plaintiffs motion in limine to preclude Worcester Official and Worcester Proffered expert Kenneth Croft from offering expert opinions for failure to properly and timely identify them in answers to interrogatories. (E-FILED)  Applies To: Town of Holden (Plaintiff)	98.2	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to preclude defendants from referring to the 1999 agreement as an "unenforceable agreement to agree" or presenting such evidence at trial. (E-FILED)	99	 <a href="#">Image</a>
07/05/2022	Opposition to motion in limine to preclude defendants from referring to the 1999 agreement as an "unenforceable agreement to agree" or presenting such evidence at trial. (E-FILED) filed by Department of Conservation and Recreation	99.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  Plaintiffs reply to Defendant, Department of Conservation and Recreations opposition to plaintiffs motion in limine to preclude defendants from referring to the 1999 agreement as an "unenforceable agreement to agree" or presenting such evidence at trial. (E-FILED)  Applies To: Town of Holden (Plaintiff)	99.2	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to exclude evidence regarding the timeliness of Holden's objections to Wastewater Transport charges. (E-FILED)	100	 <a href="#">Image</a>
07/05/2022	Opposition to Town of Holdens motion in limine to exclude evidence regarding the timeliness of Holden's objections to Wastewater Transport charges. (E-FILED) filed by Department of Conservation and Recreation, City of Worcester	100.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  Plaintiffs reply to defendants opposition to the Town of Holdens motion in limine to exclude evidence regarding the timeliness of Holden's objections to Wastewater Transport charges. (E-FILED)  Applies To: Town of Holden (Plaintiff)	100.2	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to admit evidence regarding the calculation of Holdens wastewater transport charges under prior agreements. (E-FILED)	101	 <a href="#">Image</a>
07/05/2022	Opposition to Town of Holdens motion in limine to admit evidence regarding the calculation of Holdens wastewater transport charges under prior agreements. (E-FILED) filed by Department of Conservation and Recreation, City of Worcester	101.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  Plaintiff Town of Holdens reply to defendants opposition to the Town of Holdens motion in limine to admit evidence regarding the calculation of Holdens wastewater transport charges under prior agreements. (E-FILED)  Applies To: Town of Holden (Plaintiff)	101.2	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to preclude defendants from presenting evidence regarding the amount of money of Holden has spent on attorneys fees. (E-FILED)	102	 <a href="#">Image</a>
07/05/2022	Opposition to to plaintiffs motion in limine 1, 3, and 10. (E-FILED) filed by Department of Conservation and Recreation, City of Worcester Response and Limited Opposition	102.1	 <a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to determine the damages period for Holdens unjust enrichment claim against Worcester. (E-FILED)	103	 <a href="#">Image</a>
07/05/2022	Opposition to plaintiffs motion in limine to determine the damages period for Holdens unjust enrichment claim against Worcester. (E-FILED) filed by City of Worcester	103.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  Holdens reply memorandum in support of motion in limine to determine the damages period for Holdens unjust enrichment claim against Worcester. (E-FILED)  Applies To: Town of Holden (Plaintiff)	103.2	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to exclude introduction of April 21, 1983 letter from Brutsch to Grady into evidence. (E-FILED)	104	 <a href="#">Image</a>
07/05/2022	Opposition to The Town of Holdens motion in limine to exclude introduction of April 21, 1983 letter from Brutsch to Grady into evidence. (E-FILED) filed by Department of Conservation and Recreation	104.1	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to allow for attorney conducted voir dire and supplemental juror questionnaire. (E-FILED)	105	 <a href="#">Image</a>
07/05/2022	Opposition to Plaintiffs motions in limine 1, 3, and 10. (E-FILED) filed by City of Worcester, Department of Conservation and Recreation Omnibus Response and Limited Opposition	106	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Submission of proposed voir dire questions. (E-FILED)	107	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Submission of Proposed voir dire questions. (E-FILED)	107.1	 <a href="#">Image</a>
07/05/2022	Opposition to Plaintiffs proposed voir dire questions. (E-FILED) filed by City of Worcester, Department of Conservation and Recreation	107.2	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to preclude certain anticipated testimony of Worcester designated expert, David Russell. (E-FILED)	108	 <a href="#">Image</a>
07/05/2022	Opposition to Plaintiffs motions in limine 1, 3, and 10. (E-FILED) filed by City of Worcester, Department of Conservation and Recreation Omnibus Response and Limited Opposition	108.1	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion in limine to preclude certain anticipated testimony of Worcester's designated expert, Edward Markus. (E-FILED)	109	 <a href="#">Image</a>
07/05/2022	Opposition to plaintiffs motions in limine to preclude certain anticipated testimony of Worcester designated expert, Edward Markus. (E-FILED) filed by City of Worcester	109.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  Plaintiff Town of Holdens reply to defendant City of Worcester's opposition to plaintiffs motions in limine to preclude certain anticipated testimony of Worcester designated expert, Edward Markus. (E-FILED)	109.2	 <a href="#">Image</a>
07/05/2022	Defendant Department of Conservation and Recreation's Motion in limine to exclude The Town of Holdens claim for monetary relief from the Commonwealth. (E-FILED)	110	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Submission of Opposition to defendant Department of Conservation and Recreations, Motion in limine. (E-FILED)	110.1	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Memorandum of Law in support of its opposition to defendant Department of Conservation and Recreations Motion in limine. (E-FILED)	110.2	 <a href="#">Image</a>
07/05/2022	Defendant Department of Conservation and Recreation's Reply in support of its motion in limine to exclude The Town of Holdens claim for monetary relief from the commonwealth. (E-FILED)	110.3	 <a href="#">Image</a>
07/05/2022	Defendant Department of Conservation and Recreation's Submission of Rule 9A Notice of Filing. (E-FILED)	110.4	 <a href="#">Image</a>
07/05/2022	Defendant City of Worcester's Motion in limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement [Corrected Motion] (E-FILED)	111	 <a href="#">Image</a>
07/05/2022	Opposition to p#120: Motion in limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement filed by Town of Holden (E-FILED)	111.1	 <a href="#">Image</a>
07/05/2022	Defendant City of Worcester's Notice of Filing	111.2	 <a href="#">Image</a>




<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	(E-FILED)		
07/05/2022	Plaintiff Town of Holden's Motion in limine to Allow Admission of Charts Summarizing Data Contained in Public Records (E-FILED)	112	 <a href="#">Image</a>
07/05/2022	Opposition to P#112 filed by City of Worcester, Department of Conservation and Recreation(LIMITED) to Plaintiff's Motion in Limine to Allow Admission of Charts Summarizing Data Contained in Public Records (E-FILED)	112.1	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion to Admit Audiovisual Deposition of Joseph McGinn (E-FILED)	113	 <a href="#">Image</a>
07/05/2022	Opposition to P#113 filed by Department of Conservation and Recreation, City of Worcester to the Town of Holden's Motion in Limine to Admit Audiovisual Deposition of Joseph McGinn (E-FILED)	113.1	 <a href="#">Image</a>
07/05/2022	Plaintiff Town of Holden's Motion to Read Evidentiary Admissions to Jury (E-FILED)	114	 <a href="#">Image</a>
07/05/2022	Opposition to P#114 filed by Department of Conservation and Recreation, City of Worcester to the Town of Holden's Motion in Limine to Read Evidentiary Admissions to the Jury (E-FILED)	114.1	 <a href="#">Image</a>
07/05/2022	Reply/Sur-reply  of Plaintiff Town of Holden to Defendants' Opposition to Plaintiff's Motion in Limine to Read Evidentiary Admissions to Jury (E-FILED)	114.2	 <a href="#">Image</a>
07/06/2022	City of Worcester's Memorandum in support of Corrected Motion in limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement (P#111) (E-FILED)	115	 <a href="#">Image</a>
07/08/2022	Plaintiff Town of Holden's Submission of Proposed Precharge Jury Instructions (E-FILED)	116	 <a href="#">Image</a>
07/08/2022	Plaintiff Town of Holden's Submission of Proposed Empanelment Jury Instructions (E-FILED)	117	 <a href="#">Image</a>
07/08/2022	Plaintiff Town of Holden's Submission of Excerpts of Deposition Transcripts to be Read to Jury (E-FILED)	118	 <a href="#">Image</a>
07/08/2022	Party(s) file Agreement as to Statement of Case to be Read to Jury (E-FILED)  Applies To: Moore, Esq., David M (Attorney) on behalf of City of Worcester (Defendant); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff); Vander Weele, Esq., Sally A (Attorney) on behalf of Department of Conservation and Recreation (Defendant)	119	 <a href="#">Image</a>
07/08/2022	Plaintiff Town of Holden's Submission of Agreed Statement of Facts (E-FILED)	120	 <a href="#">Image</a>
07/11/2022	Plaintiff Town of Holden's Submission of Agreed and Contested Exhibits (E-FILED)	121	 <a href="#">Image</a>
07/12/2022	Event Result:: Final Trial Conference scheduled on: 07/12/2022 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/13/2022	Defendant City of Worcester's EMERGENCY Motion for Leave to File Summary Judgment Outside of the Tracking Order (E-FILED)	122	 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Preclude Testimony of DCR's Listed Witness Mark Smith (#97.0): DENIED Notices mailed 7/14/22		






<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	Judge: Manitsas, Hon. James M		
07/13/2022	Endorsement on Motion in Limine to Preclude Worcester Officials and Worcester Proffered Expert Kenneth Croft From Offering Expert Opinions for Failure to Properly and Timely Identify Them in Answers to Interrogatories (#98.0): DENIED Any issues of inadequate expert disclosures will be reserved for time of trial. Notices mailed 7/14/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Preclude Defendants From Referring to the 1999 Agreement as an "Unenforceable Agreement to Agree" or Presenting Such Evidence at Trial (#99.0): DENIED The parties are free to argue all reasonable inferences from the evidence introduced at trial. Notices mailed 7/14/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Exclude Evidence Regarding the Timeliness of Holden's Objections to Wastewater Transport Charges (#100.0): DENIED As the subject of the Town of Holden's objection to the wastewater transportation charges may prove relevant on the topic of an agreement through a course of dealing. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		
07/13/2022	Endorsement on Motion in Limine to Admit Evidence Regarding the Calculation of Holden's Wastewater Transport Charges Under Prior Agreements (#101.0): Reserved Reserved until the time of trial. The parties prior course of dealings may be relevant on the intended meaning of any subsequent agreement. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Preclude Defendants From Presenting Evidence Regarding the Amount of Money Holden has Spent on Attorneys' Fees (#102.0): ALLOWED Allowed by agreement, unless and until the Plaintiff, opens the door, and makes the subject relevant. Should this occur, the Defendant's are instructed to address the court on this issue seeking to offer such evidence. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Exclude Introduction of April 21, 1983 Letter From Brutsch to Grady into Evidence (#104.0): Reserved Reserved until the time of trial. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Allow for Attorney Conducted Voir Dire and Supplemental Juror Questionnaire (#105.0): ALLOWED Motion Allowed as to Attorney conducted voir dire. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Submission of Proposed Voir Dire Questions (#107.0): No Action Taken Parties were instructed on jury empanelment procedures at the final trial conference on July 12, 2022. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Preclude Certain Anticipated Testimony of Worcester's Designated Expert, David Russell (#108.0): No Action Taken Defendant City of Worcester reports that David Russell will not testify at trial. Motion may be re-newed, should Defendant seek to call this witness. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		
07/13/2022	Endorsement on Motion in Limine to Preclude Certain Anticipated Testimony of Worcester's Designated Expert, Edward Markus (#109.0): Reserved Reserved until the time of trial. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion in Limine to Allow Admission of Charts Summarizing Data Contained in Public Records (#112.0): No Action Taken The parties are to confer on a possible agreement regarding the admission of summary charts. (See Mass G. Evidence § 1006.) If no agreement can be reached, the court, will address the issue of an appropriate time period at trial. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>

<u><a href="#">Docket Date</a></u>	<u><a href="#">Docket Text</a></u>	<u><a href="#">File Ref Nbr.</a></u>	<u><a href="#">Image Avail.</a></u>
07/13/2022	Endorsement on Motion to Admit Audiovisual Deposition of Joseph McGinn (#113.0): Reserved Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/13/2022	Endorsement on Motion to Read Evidentiary Admissions to Jury (#114.0): No Action Taken Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		
07/13/2022	Endorsement on Submission of Excerpts of Deposition Transcripts to be Read to Jury (#118.0): No Action Taken Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/14/2022	Endorsement on Motion in Limine to Determine the Damages Period for Holden's Unjust Enrichment Claim Against Worcester (#103.0): Other action taken See order dated 7/14/22. Notices mailed 7/15/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/14/2022	ORDER: RE: P#103 Motion in Limine to Determine the Damages Period for Holden's Unjust Enrichment Claim Against Worcester- (See Order) Copies mailed 7/15/22  Judge: Manitsas, Hon. James M	123	 <a href="#">Image</a>
07/18/2022	Plaintiff Town of Holden's Submission of Disclosure of Identity and Order of Testifying Witnesses (E-FILED)	124	 <a href="#">Image</a>
07/18/2022	Plaintiff Town of Holden's Submission of Proposed Verdict Form (E-FILED)	125	 <a href="#">Image</a>
07/18/2022	Plaintiff Town of Holden's Submission of Proposed Jury Instructions (E-FILED)	126	 <a href="#">Image</a>
07/19/2022	Attorney appearance electronically filed.  Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff)		 <a href="#">Image</a>
07/19/2022	Department of Conservation and Recreation's Memorandum (SUPPLEMENTAL) in Further Support of It's Motion in Limine to Exclude the Town of Holden's Claim for Monetary Relief from the Commonwealth (P#110) (E-FILED)	127	 <a href="#">Image</a>
07/19/2022	Defendant Department of Conservation and Recreation's Submission of Witness List (E-FILED)	128	 <a href="#">Image</a>
07/19/2022	Opposition to P#122 filed by Town of Holdento Worcester's "Emergency" Motion for Leave to File a Further Summary Judgment Motion (E-FILED)	129	 <a href="#">Image</a>
07/19/2022	General correspondence regarding Defendant City of Worcester's Proposed Jury Instructions	148	 <a href="#">Image</a>
07/19/2022	General correspondence regarding The Department of Conservation and Recreation's Proposed Jury Instructions	149	 <a href="#">Image</a>
07/19/2022	General correspondence regarding Defendant City of Worcester's Proposed Special Verdict Slip	150	 <a href="#">Image</a>
07/20/2022	Defendant City of Worcester's EMERGENCY Motion for Rulings as a Matter of Law (E-FILED)	130	 <a href="#">Image</a>
07/20/2022	Defendant Department of Conservation and Recreation's EMERGENCY Motion for Rulings as a Matter of Law (E-FILED)	131	 <a href="#">Image</a>
07/20/2022	Endorsement on Motion in Limine to Exclude the Town of Holden's Claim for Monetary Relief From the Commonwealth (#110.0): Reserved The parties are instructed on the subject of arguing damages to review and comply with MRCP Rule 51 (a)(2). Notices mailed 7/21/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/20/2022	Endorsement on Motion in Limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement [Corrected Motion] (#111.0): Reserved The parties are instructed on the subject of arguing damages to review and comply with MRCP Rule 51 (a)(2). Notices mailed 7/21/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/20/2022	Endorsement on Motion for Leave to File Summary Judgment Outside of the Tracking Order (#122.0): DENIED Notices mailed 7/21/22  Judge: Manitsas, Hon. James M		
07/21/2022	Plaintiff Town of Holden's Submission of Opposition to the Defendant of Conservation and Recreation's "Emergency" Motion for Rulings as a Matter of Law (P#132) (E-FILED)	132	 <a href="#">Image</a>
07/21/2022	Opposition to P#130 filed by Town of Holdento Defendant City of Worcester's Further "Emergency" Motion for Rulings as a Matter of Law (E-FILED)	133	 <a href="#">Image</a>
07/21/2022	Attorney appearance electronically filed.  Applies To: Johl, Esq., Rauvin A (Attorney) on behalf of Department of Conservation and Recreation (Defendant)		 <a href="#">Image</a>
07/21/2022	Plaintiff Town of Holden's Submission of Disclosure of Trial Chalks (E-FILED)	134	 <a href="#">Image</a>
07/21/2022	Endorsement on Motion for Rulings as a Matter of Law (#130.0): Other action taken The court cannot rule on this motion as it seeks the disclosure of the nature of the Plaintiff's claim. It is assumed that these questions were presented by the Defendant to the Plaintiff in discovery requests. Further, Defendant's footnotes #2 and #3 appear to answer Defendant's own question. Notices mailed 7/25/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
07/21/2022	ORDER: RE: P# 131- No action taken at this time. The Plaintiff is to file its response and/or opposition by the start of trial on July 25, 2022. Copies mailed 7/25/22  Judge: Manitsas, Hon. James M	138	 <a href="#">Image</a>
07/22/2022	Plaintiff Town of Holden's Notice of Intent to Suggest a Specific Monetary Amount of Damages to the Jury Pursuant to Mass.R.Civ.P. Rule 51(a)(2) and G.L. c. 231, sec. 16B (E-FILED)	135	 <a href="#">Image</a>
07/25/2022	Opposition to Plaintiff's Proposed Jury Instructions and Proposed Verdict Form filed by City of Worcester (E-FILED)	136	 <a href="#">Image</a>
07/25/2022	Defendant City of Worcester's Motion to Preclude Any Reference to Certain Statutes, Contracts, and Agreements (E-FILED)	137	 <a href="#">Image</a>
07/25/2022	Plaintiff Town of Holden's Submission of Proposed Jury Instructions (E-FILED)	139	 <a href="#">Image</a>
07/25/2022	Defendant Department of Conservation and Recreation's Submission of Proposed Verdict Slip (E-FILED)	140	 <a href="#">Image</a>
07/25/2022	Event Result:: Jury Trial scheduled on: 07/25/2022 09:00 AM Has been: Held as Scheduled Comments: To continue for 2 weeks Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/25/2022	General correspondence regarding Pocket Brief of Town of Holden Memo of Implied Impermissibility of Municipality Entering Into Implied Contracts- Filed in Court	152	 <a href="#">Image</a>
07/25/2022	Response, Objection to City of Worcester's Proposed Jury Instructions filed by Town of Holden Filed in Court	153	 <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/25/2022	Response, Objection to City of Worcester's Proposed Special Verdict Slip filed by Town of Holden Filed in Court	154	 <a href="#">Image</a>
07/25/2022	Response, Objection to The Department of Conservation and Recreation's Proposed Jury Instructions filed by Town of Holden Filed in Court	155	 <a href="#">Image</a>
07/25/2022	Response, Objection to The Department of Conservation and Recreation's Proposed Verdict Slip filed by Town of Holden Filed in Court	156	 <a href="#">Image</a>
07/26/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 07/26/2022 Time: 09:00 AM Result: Held as Scheduled		
07/26/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 07/27/2022 Time: 09:00 AM Result: Held as Scheduled		
07/26/2022	Event Result:: Jury Trial scheduled on: 07/26/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/26/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 07/28/2022 Time: 09:00 AM Result: Held as Scheduled		
07/26/2022	Response to to Defendants' Objections to Holden's Proposed Chalks filed by Town of Holden Filed in Court	151	 <a href="#">Image</a>
07/27/2022	Event Result:: Jury Trial scheduled on: 07/27/2022 09:00 AM Has been: Held as Scheduled Comments: continuing over multiple days Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/27/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/01/2022 Time: 09:00 AM Result: Held as Scheduled		
07/27/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/02/2022 Time: 09:00 AM Result: Held as Scheduled		
07/28/2022	Event Result:: Jury Trial scheduled on: 07/28/2022 09:00 AM Has been: Held as Scheduled Comments: FTR - rm 25 - continues over multiple days Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
07/28/2022	Defendant Department of Conservation and Recreation's Motion for Directed Verdict- Filed in Court	157	
07/29/2022	Defendant City of Worcester's Motion for Directed Verdict (E-FILED)	141	 <a href="#">Image</a>
07/29/2022	City of Worcester's Memorandum in Support of Defendant City of Worcester's Motion for Directed Verdict (E-FILED)	141.1	 <a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
08/01/2022	Opposition to P#____ filed by Town of Holdento Department of Conservation and Recreation's Motion for Directed Verdict (E-FILED)	142	 <a href="#">Image</a>
08/01/2022	Opposition to P#141 filed by Town of Holdento City of Worcester's Motion for Directed Verdict (E-FILED)	143	 <a href="#">Image</a>
08/01/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/03/2022 Time: 09:00 AM Result: Held as Scheduled		
08/01/2022	Event Result:: Jury Trial scheduled on: 08/01/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/01/2022	Endorsement on Motion for Directed Verdict (#157.0): DENIED Notices mailed 8/23/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
08/01/2022	Brief filed: Other - On the Calculation of Pre-Judgment Interest- Filed in Court  Applies To: Town of Holden (Plaintiff)	158	 <a href="#">Image</a>
08/01/2022	Endorsement on Motion for Directed Verdict by Defendant City of Worcester (#141.0): DENIED Denied, as to Counts one and counts four. Allowed as to counts five. Notices mailed 8/23/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
08/02/2022	Event Result:: Jury Trial scheduled on: 08/02/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/02/2022	Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/04/2022 Time: 09:00 AM Result: Held as Scheduled		
08/02/2022	General correspondence regarding Plaintiff Town of Holden's Supplemental Proposed Jury Instructions- Filed in Court	159	 <a href="#">Image</a>
08/02/2022	General correspondence regarding Defendant City of Worcester's Third Revised Proposed Special Verdict Slip- Filed in Court	160	 <a href="#">Image</a>
08/02/2022	General correspondence regarding Defendant City of Worcester's Fourth Revised Proposed Special Verdict Slip- Filed in Court	161	 <a href="#">Image</a>
08/02/2022	General correspondence regarding The Department of Conservation and Recreation's Revised Proposed Verdict Slip- Filed in Court	162	 <a href="#">Image</a>
08/02/2022	General correspondence regarding The Department of Conservation and Recreation's Revised Proposed Jury Instructions- Filed in Court	163	 <a href="#">Image</a>
08/03/2022	Event Result:: Jury Trial scheduled on: 08/03/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/03/2022	General correspondence regarding Verdict Form I	146	 <a href="#">Image</a>
08/03/2022	Plaintiff Town of Holden's Motion in Limine to Preclude Evidence and Attorney Statements Regarding the Alleged Wealth of Town of Holden Residents- Filed in Court	164	 <a href="#">Image</a>
08/04/2022	Event Result:: Jury Trial scheduled on: 08/04/2022 09:00 AM		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/04/2022	Defendant City of Worcester's EMERGENCY Motion for Leave to Submit Proposed Findings and Rulings Before Further Action by the Court  (E-FILED)	144	 <a href="#">Image</a>
08/04/2022	General correspondence regarding Verdict Form II on Unjust Enrichment Claim	147	 <a href="#">Image</a>
08/08/2022	The following form was generated:  Notice to Appear Sent On: 08/08/2022 11:20:24		 <a href="#">Image</a>
08/08/2022	Opposition to p#144: Emergency Motion to Submit Proposed Findings and Rulings Before Further Action by the Court filed by Town of Holden (E-FILED)	145	 <a href="#">Image</a>
08/12/2022	Event Result:: Conference to Review Status scheduled on: 08/30/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/12/2022	The following form was generated:  Notice to Appear Sent On: 08/12/2022 10:32:36		
08/12/2022	Exhibits Returned Atty Chris Petrini (BY AGREEMENT OF ALL PARTIES) All exhibits 1 - 25; and ID A - CC		
08/23/2022	List of exhibits  Witness and Exhibit List for the Jury Trial commenced in Room 25 on 7/25/22 before the Honorable James Manitsas	165	 <a href="#">Image</a>
08/29/2022	Plaintiff Town of Holden's Submission of Filing of Certain Pre-Trial and Trial Transcripts  (E-FILED)	166	 <a href="#">Image</a>
09/07/2022	Defendant City of Worcester's Motion for Judgment Notwithstanding the Verdict (E-FILED)	167	 <a href="#">Image</a>
09/07/2022	City of Worcester's Memorandum in Support of Motion for Judgment Notwithstanding the Verdict (E-FILED)	167.1	 <a href="#">Image</a>
09/07/2022	Opposition to P#167 filed by Town of Holdento Defendant, City of Worcester's Motion for Judgment Notwithstanding the Verdict (E-FILED)	167.2	 <a href="#">Image</a>
09/07/2022	Reply/Sur-reply  of Defendant City of Worcester's to Plaintiff Town of Holden's Opposition to Worcester's Motion for Judgment Notwithstanding the Verdict (E-FILED)	167.3	 <a href="#">Image</a>
09/07/2022	Defendant City of Worcester's Notice of Filing (E-FILED)	167.4	 <a href="#">Image</a>
09/12/2022	Plaintiff Town of Holden's Submission of Rule 59(e) Motion to Alter Judgment to Set Aside Inconsistent Portion of Jury Verdict as to Defendant, Department of Conservation and Recreation (E-FILED)	168	 <a href="#">Image</a>
09/12/2022	Town of Holden's Memorandum in Support of Its Rule 59(e) Motion to Alter Judgment and Set Aside Inconsistent Portion of Jury Verdict as to Defendant, Department of Conservation and Recreation (E-FILED)	168.1	 <a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
09/12/2022	Opposition to P#168 filed by Department of Conservation and Recreation to Plaintiff's Rule 59(e) Motion to Alter Judgment and Set Aside Portions of the Jury Verdict (E-FILED)	168.2	 <a href="#">Image</a>
09/12/2022	Reply/Sur-reply of Plaintiff to DCR's Opposition to Holden's Rule 59(e) Motion (E-FILED)	168.3	 <a href="#">Image</a>
09/12/2022	Plaintiff Town of Holden's Submission of Superior Court Rule 9A List of Documents (E-FILED)	168.4	 <a href="#">Image</a>
09/14/2022	Event Result:: Conference to Review Status scheduled on: 09/15/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
09/14/2022	The following form was generated:  Notice to Appear Sent On: 09/14/2022 08:31:18		
09/21/2022	Event Result:: Conference to Review Status scheduled on: 09/21/2022 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
10/14/2022	Proposed Filings/Orders  Request for Findings of Fact and Conclusions of Law (E-FILED)  Applies To: Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff)	169	 <a href="#">Image</a>
10/14/2022	Town of Holden's Memorandum in Further Support of Request for Findings of Fact and Rulings of Law on Issue of Retraction of Waiver (E-FILED)	169.1	 <a href="#">Image</a>
10/14/2022	Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master (E-FILED)	170	 <a href="#">Image</a>
10/14/2022	Proposed Filings/Orders  Defendant City of Worcester's Propose Findings of Fact an Rulings of Law	171	 <a href="#">Image</a>
10/17/2022	Defendant Department of Conservation and Recreation's Submission of Post-Trial Brief, Proposed Conclusions of Law, and Request for Judgment Pursuant to Rule 58(a)(2) (E-FILED)	172	 <a href="#">Image</a>
10/18/2022	Exhibits/Appendix  Defendant City of Worcester's Filing of Certain Trial Transcripts [E-FILED]	173	 <a href="#">Image</a>
10/28/2022	Opposition to Town of Holden's Motion in the Alternative to Appoint a Special Master filed by Department of Conservation and Recreation See paper #170 [E-FILED]	174	 <a href="#">Image</a>
10/28/2022	Defendant Department of Conservation and Recreation's Response to the Town of Holden's and the City of Worcester's Requests for Findings of Fact and Conclusions of Law See papers #169 and #171 [E-FILED]	175	 <a href="#">Image</a>
10/28/2022	Defendant Department of Conservation and Recreation's Submission of Supplemental Post-Trial Brief on the Issue of Retraction [E-FILED]	176	 <a href="#">Image</a>
10/28/2022	Defendant City of Worcester's Response to Plaintiff Town of Holden's Requests for Findings of Facts and Conclusions of Law and Department of Conservation and Recreation's Post-Trial Brief, Proposed Conclusions of Law, and Request for Judgment	177	 <a href="#">Image</a>

<u><a href="#">Docket Date</a></u>	<u><a href="#">Docket Text</a></u>	<u><a href="#">File Ref Nbr.</a></u>	<u><a href="#">Image Avail.</a></u>
	See papers #169 and #172 [E-FILED]		
10/28/2022	Defendant City of Worcester's Objection to Town of Holden's Requests for Findings of Facts and Conclusions of Law  See paper #169 [E-FILED]	178	 <a href="#">Image</a>
10/28/2022	Opposition to the Department of Conservation and Recreation's Requests for Findings of Fact, Conclusions of Law and Entry of Judgment filed by Town of Holden See paper #172 [E-FILED]	179	 <a href="#">Image</a>
10/28/2022	Opposition to To Proposed Findings of Fact and Rulings of Law by Defendant, City of Worcester filed by Town of Holden See paper #171 [E-FILED]	180	 <a href="#">Image</a>
11/02/2022	Matter taken under advisement: Motion Hearing scheduled on: 11/02/2022 02:00 PM Has been: Held - Under advisement Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
11/04/2022	Defendant City of Worcester's Submission of Filing of Cases Concerning Unjust Enrichment [E-FILED]	181	 <a href="#">Image</a>

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# 1385CV00910 Town of Holden vs. Department of Conservation and Recreation et al















- Case Type:
- Actions Involving the State/Municipality
- Case Status:
- Suspended-Covid-19
- File Date
- 05/24/2013
- DCM Track:
- A - Average
- Initiating Action:
- Tortious Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
- 05/24/2013
- Case Judge:
- 
- Next Event:
- 

**All Information**   **Party**   **Subsequent Action/Subject**   **Event**   **Tickler**   **Docket**   **Disposition**





## Docket Information






<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/09/2022	Defendant City of Worcester's EMERGENCY Request for leave to file opposition to Plaintiff Town of Holden's motion in the alternative to appoint a special master (E-FILED)	182	 <a href="#">Image</a>
11/14/2022	Opposition to P#182 filed by Town of Holdento City of Worcester's "Emergency" Request for Leave to File Opposition to Holden's Motion in the Alternative to Appoint Special Master (E-FILED)	183	 <a href="#">Image</a>
11/15/2022	Reply/Sur-reply  Defendant City of Worcester's Reply to Plaintiff Town of Holden's Opposition to Worcester's Emergency Request for Leave to File Opposition to Holden's Motion in the Alternative to Appoint a Special Master See paper #183 [E-FILED]	184	 <a href="#">Image</a>
11/15/2022	Endorsement on Request for Leave to File Opposition to Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master (#182.0): ALLOWED Further, Plaintiff and Co-Defendant are granted 1 (one) week, following the filing of the opposition, to file a reply (will be limited to (2) two pages). Notices mailed 11/17/22  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
11/15/2022	Opposition to Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master filed by City of Worcester	185	 <a href="#">Image</a>
11/18/2022	Plaintiff Town of Holden's Motion for Clarification of Court's Endorsement on City of Worcester's Emergency Request for Leave to File Opposition to Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master (Docket Paper No. 182) and to Strike Worcester's Reply (Docket Paper No. 184) (E-FILED)	186	 <a href="#">Image</a>
11/23/2022	Reply/Sur-reply  Town of Holden's Reply to City of Worcester's Opposition to Motion in the Alternative to Appoint Special Master  (P#185) (E-FILED)	187	 <a href="#">Image</a>
12/14/2022	ORDER: FINDINGS OF FACT AND RULINGS OF LAW ON TOWN OF HOLDEN'S CLAIMS FOR DECLARATORY JUDGMENT- (See Order) Copies mailed 12/20/22  Judge: Manitsas, Hon. James M	188	 <a href="#">Image</a>







<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/22/2022	MEMORANDUM & ORDER:  ON CROSS-MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT- ORDER: For the foregoing reasons, the City of Worcester's Motion for Judgment Notwithstanding the Verdict is DENIED. The Town of Holden's Motion to Amend Judgment Pursuant to Rule 59(e) is DENIED. Entered and Copies mailed 12/22/22  Judge: Manitsas, Hon. James M	189	 <a href="#">Image</a>
12/29/2022	Defendant City of Worcester's Motion to Defer Entry of Judgment Pending Ruling on Its Limited Motion for Reconsideration [E-FILED]	190	 <a href="#">Image</a>
01/04/2023	Opposition to paper #190, Defendant's motion to defer entry of judgment and limited motion for reconsideration filed by Town of Holden (E-FILED)	191	 <a href="#">Image</a>
01/06/2023	Plaintiff Town of Holden's Request for award of prejudgment interest and costs (E-FILED)	192	 <a href="#">Image</a>
01/09/2023	Defendant City of Worcester's Submission of Limited Motion for Reconsideration Relating to the Court's Ruling of Law (E-FILED)	193	 <a href="#">Image</a>
01/09/2023	Opposition to P#193 filed by Town of Holdento City of Worcester's Motion to Defer Entry of Judgment and Limited Motion for Reconsideration (E-FILED)	193.1	 <a href="#">Image</a>
01/09/2023	Defendant Department of Conservation and Recreation's Response to the City of Worcester's Limited Motion for Reconsideration (E-FILED)	193.2	 <a href="#">Image</a>
01/09/2023	Reply/Sur-reply  of Defendant City of Worcester to Plaintiff Town of Holden's Opposition to Worcester's Motion to Defer Entry of Judgment and Limited Motion for Reconsideration (E-FILED)	193.3	 <a href="#">Image</a>
01/09/2023	Defendant City of Worcester's Notice of Filing (E-FILED)	193.4	 <a href="#">Image</a>
01/12/2023	Endorsement on Motion to Defer Entry of Judgment Pending Ruling on its Limited Motion for Reconsideration (#190.0): DENIED Notices mailed 1/18/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
01/12/2023	Endorsement on Request for Award of Prejudgment Interest and Costs (#192.0): DENIED Denied without prejudice. Plaintiff to comply with Rule 9A and 9C. Notices mailed 1/18/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
01/12/2023	Endorsement on Motion for Reconsideration Relating to the Court's Ruling of Law (#193.0): DENIED See decision dated 1/11/23. Notices mailed 1/18/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
01/12/2023	Endorsement on Motion to Defer Entry of Judgment Pending Ruling on its Limited Motion for Reconsideration (#190.0): DENIED Notices mailed 2/6/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
01/12/2023	Endorsement on Request for Award of Prejudgment Interest and Costs (#192.0): DENIED Denied without prejudice. Plaintiff to comply with Rule 9A and 9C. Notices mailed 2/6/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
01/12/2023	Endorsement on Motion for Reconsideration Relating to the Court's Rulings of Law (#193.0): DENIED See decision dated 1/11/23. Notices mailed 2/6/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
01/13/2023	Defendant City of Worcester's Notice of Defendant City of Worcester's intent to respond to Town of Holden's request for award of prejudgment interest and costs (E-FILED)	194	 <a href="#">Image</a>



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01/18/2023	MEMORANDUM & ORDER:  ON CITY OF WORCESTER'S MOTION FOR RECONSIDERATION- (See Order) Entered and Copies mailed 1/18/23  Judge: Manitsas, Hon. James M	195	 <a href="#">Image</a>
02/08/2023	Plaintiff Town of Holden's Assented to Motion for Leave Pursuant to Superior Court Rule 9A(a)(6)	196	
02/13/2023	Endorsement on Motion for Leave Pursuant to Superior Court Rule 9A(a)(6) (#196.0): ALLOWED Counsel shall be granted 7 days to file a reply. Notices mailed 2/13/23  Judge: Manitsas, Hon. James M		 <a href="#">Image</a>
02/14/2023	Case file images  1. Complaint (1) 2. Motion for a preliminary injunction to place disputed funds in escrow (2) 3. Affidavit of John R. Woodsmall, III, P.E., Town of Holden Director of Public Works (3) 4. Authenticating affidavit of Peter L. Mello (4) 5. Plaintiff's motion for short order of notice (5)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/14/2023	Case file images  1. Plaintiff's motion for appointment of special process server (6) 2. Affidavit of Paul D. Brinkman in support of Plaintiff's motion for preliminary injunction (6.1) 3. Notice of appearance of Sally A. VanderWeele as attorney for Defendant 4. Notice of appearance of Andrew W. Koster for Defendant 5. Summons for Department of Conservation and Recreation (7) 6. Summons for Office of the Attorney General (8) 7. Summons for the City of Worcester (9) 8. Assented-to emergency motion to change the hearing date for the Plaintiff's motion for a preliminary injunction (10) 9. Department of Conservation and Recreation's opposition to the Town of Holden's motion for a preliminary injunction (10.1) 10. Defendant City of Worcester's opposition to Plaintiff's motion for a preliminary injunction (10.2) 11. Affidavit of Paul Davison (10.3) 12. Rebuttal affidavit of Paul D. Brinkman (10.4) 13. Affidavit of Matthew J. Labovites (10.5)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/14/2023	Case file images  1. Reply memorandum of Defendant City of Worcester (11) 2. Motion to strike the expert opinion of Paul D. Brinkman and Reply Memorandum by Department of Conservation and Recreation (12) 3. Authenticating affidavit of Peter L. Mello for the Town of Holden's reply memorandum (12.1) 4. First amended complaint (12.2) 5. Plaintiff Town of Holden's reply to Defendants' oppositions to Plaintiff's motion for preliminary injunction (12.3) 6. Plaintiff Town of Holden's motion to strike portions of the affidavits of Paula Davison and Matthew J. Labovites (12.4) 7. Conditional motion of Town of Holden to stay the court's decision on the town's motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept (12.5) 8. DCR's motion to strike the index of essential documents for Holden MPI review (12.6) 9. DCR's opposition to conditional motion of Town of Holden to stay the court's decision on the town's motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept (12.7) 10. Plaintiff Town of Holden's opposition to Defendant Department of Conservation and Recreation's motions to strike the expert opinion of Paul D. Brinkman and reply and index of essential documents for Holden MPI review (13) 11. Memorandum and decision on Plaintiff, Town of Holden's motion for a preliminary injunction to place disputed funds in escrow (14) 12. Answer of the Department of Conservation and Recreation to first amended complaint (15)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/14/2023	Attorney appearance On this date Rauvin A Johl, Esq. dismissed/withdrawn for Defendant Department of Conservation and Recreation		
02/14/2023	Case file images  1. Plaintiff Town of Holden's application for entry of default against the City of Worcester under Mass.R.Civ.P. Rule 55(a) (16)		 <a href="#">Image</a>









<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
	2. Default Order (Mass.R.CIV.P. 55a) (17) 3. City of Worcester's emergency motion to set aside entry of default (18) 4. Answer, affirmative defenses and counterclaims of Defendant City of Worcester (19) 5. Plaintiff Town of Holden's opposition to the City of Worcester's emergency motion to set aside entry of default (20)  *PREVIOUSLY FILED PLEADINGS*		
02/14/2023	Case file images  1. Plaintiff Town of Holden's answer to Defendant City of Worcester's counterclaim (21) 2. Notice of appearance of Wendy L. Quinn for the Defendant, City of Worcester 3. Plaintiff Town of Holden's motion for partial summary judgment as to count six of the first amended complaint (22) 4. Joint motion to amend track designation (23) 5. Notice of appearance of C. Vered Jona for Defendant, Department of Conservation and Recreation 6. Motion to schedule conference under Mass. R. Civ. P. 16 (24) 7. List of examples of documents not produced by Worcester, to facilitate during the court's conference under Mass. R. Civ. P. 16 (25) 8. Notice of appearance of Briant Schwartz for City of Worcester  *PREVIOUSLY FILED PLEADINGS*		
02/15/2023	Case file images  1. Plaintiff Town of Holden's answer to Defendant City of Worcester's counterclaim (21) 2. Notice of appearance of Wendy L. Quinn for Defendant, City of Worcester 3. Plaintiff Town of Holden's motion for partial summary judgment as to count six of the first amended complaint (22) 4. Joint motion to amend track designation (23) 5. Notice of appearance of C. Vered Jona for Defendant, Department of Conservation and Recreation 6. Notice of withdrawal of Andrew W. Koster for Defendant, Department of Conservation and Recreation 7. Motion to schedule conference under Mass. R. Civ. P. 16 (24) 8. List of examples of documents not produced by Worcester, to facilitate during the court's conference under Mass. R. Civ. P. 16 (25) 9. Notice of appearance of Brian A. Schwartz for Defendant, City of Worcester  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/15/2023	Case file images  1. Motion to compel attendance of Matthew J Labovites at continued deposition (26) 2. City of Worcester's motion for a protective order for the continued deposition of Matthew J. Labovites (26.1) 3. City of Worcester's opposition to Plaintiff's motion to compel attendance of Matthew J. Labovites at continued deposition and memorandum in support of Worcester's motion for a protective order (26.2) 4. Motion to compel documents and ESI and Rule 37 motion for sanctions and attorneys' fees (27) 5. City of Worcester's motion for leave to file Rule 12 motion beyond the tracking order deadline (28) 6. Plaintiff Town of Holden's motion for letters rogatory (29) 7. Letter Rogatory 8. Order directing issuance of a commission 9. City of Worcester's statement regarding electronically stored information (30)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/15/2023	Case file images  1. Order establishing protocol for discovery of electronically stored information (31) 2. City of Worcester's motion for a stay of electronic discovery (32) 3. Order establishing protocol for discovery of electronically stored information (33) 4. Revised order establishing protocol for discovery of electronically stored information (34) 5. Defendant City of Worcester's motion for judgment on the pleadings (35)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/15/2023	Case file images  correspondence from Petrini & Associates, P.C. including undocketed pleadings re: motion to schedule conference call to discuss ESI issues  *PREVIOUSLY FILED PLEADINGS*		
02/16/2023	Plaintiff Town of Holden's Request for Award of Prejudgment Interest and Costs [E-FILED]	197	 <a href="#">Image</a>
02/16/2023	Opposition to P# 197: Plaintiff's Request for Award of Prejudgment Interest and Costs filed by City of Worcester [E-FILED]	197.1	 <a href="#">Image</a>








<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
02/16/2023	Reply/Sur-reply  Town of Holden's Memorandum in Reply to P#197.1: City of Worcester's Opposition to Holden's Request for Award of Prejudgment Interest and Costs [E-FILED]	197.2	 <a href="#">Image</a>
02/16/2023	Reply/Sur-reply  Defendant City of Worcester's Surreply in Opposition to Holden's Request for Award of Prejudgment Interest and Costs [E-FILED]	197.3	 <a href="#">Image</a>
02/16/2023	Plaintiff Town of Holden's Submission of Rule 9A List of Documents [E-FILED]	197.4	 <a href="#">Image</a>
02/16/2023	Affidavit of Compliance with Superior Court Rule 9C [E-FILED]	197.5	 <a href="#">Image</a>
02/23/2023	Case file images  1. Correspondence from Petrini & Assoc., copy of the Town's proposed order establishing protocols for discovery of electronically stored information 2. Endorsement regarding Defendant City of Worcester's motion to stay electronic discovery (36) 3. City of Worcester's emergency motion for clarification and modification of ESI order (37) 4. Plaintiff Town of Holden's opposition to the Defendant City of Worcester's emergency motion for clarification and modification of ESI order (38) 5. Request for leave to file a brief reply memorandum (39) 6. Plaintiff Town of Holden's reply to Defendant City of Worcester's opposition to Plaintiff's motion to strike portions of Worcester's motion for judgment on the pleadings (40)  *PREVIOUSLY FILED PLEADINGS*		  <a href="#">Image</a>
02/23/2023	Case file images  Correspondence from Petrini & Associates, non numbered/non docketed pleadings 1. Motion to schedule conference call to discuss ESI issues 2. City of Worcester's partial opposition to Plaintiff's motion for a conference call 3. Memorandum of law in support of City of Worcester's partial opposition 4. Plaintiff Town of Holden's opposition to Defendant City of Worcester's cross motion for clarification and modification of ESI order 5. Memorandum of law in support of Town of Holden's opposition to the Defendant City of Worcester's cross motion for clarification and modification of ESI order 6. Notice of filing pursuant to Superior Court Rule 9A  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/23/2023	Case file images  1. Correspondence from City of Worcester reporting on the status of the dispute regarding ESI 2. Plaintiff Town of Holden report regarding the ESI consultant's meeting and remaining disputed ESI issues between Holden and Worcester (42) 3. DCR's emergency motion for an extension to complete ESI discovery in light of the blizzard (43) 4. Order regarding Defendant City of Worcester's motion for clarification and modification of ESI order (44) 5. Memorandum of decision and order on Worcester's motion for judgment on the pleadings (45) 6. Plaintiff Town of Holden status report pursuant to Court's order dated March 9, 2015 (45.1)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/23/2023	Case file images  1. Emergency motion by Defendant Department of Conservation and Recreation for an extension 2. City of Worcester's status report on ESI (47) 3. Plaintiff Town of Holden status report (48) 4. Correspondence from City of Worcester reporting the status of the production of ESI 5. City of Worcester's status report on ESI (49) 6. Order regarding hearing on further compliance with ESI order (50)  *PREVIOUSLY FILED PLEADINGS*		 <a href="#">Image</a>
02/23/2023	Case file images  1. City of Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (51) 2. Defendants' joint emergency motion to extend discovery and summary judgment deadlines (52) 3. Correspondence from Petrini & Assoc. requesting leave to file a memorandum of law in support of Plaintiff's forthcoming motion for summary judgment (52.1) 4. Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery		

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	<p>and summary judgment deadlines and Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53)</p> <p>5. Affidavit of Peter L. Mello Esq. in support of Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave to file for an enlargement of time for serving an opposition as to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53.1)</p> <p>6. Plaintiff Town of Holden's request for hearing (53.2)</p> <p>7. Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (54)</p> <p>8. Memorandum of law in support of Holden's motion for summary judgment on Worcester's counterclaims (54.1)</p> <p>9. The parties consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (54.2)</p> <p>10. Affidavit of Christopher L. Brown (54.3)</p> <p>11. Notice of filing pursuant to Superior Court Rule 9A</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		
02/23/2023	<p>Case file images</p> <p>1. City of Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (51)</p> <p>2. Defendants' joint emergency motion to extend discovery and summary judgment deadlines (52)</p> <p>3. Correspondence requesting leave to file a memorandum of law in support of Plaintiff's forthcoming motion for summary judgment (52.1)</p> <p>4. Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53)</p> <p>5. Affidavit of Peter L. Mello, Esq. in support of Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53.1)</p> <p>6. Plaintiff Town of Holden's request for hearing (53.2)</p> <p>7. Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (54)</p> <p>8. Memorandum of law in support of Holden's motion for summary judgment on Worcester's counterclaims (54.1)</p> <p>9. The parties' consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to the City of Worcester's counterclaims (54.2)</p> <p>10. Affidavit of Christopher L. Brown (54.3)</p> <p>11. Notice of filing pursuant to Superior Court Rule 9A</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		 <a href="#">Image</a>
02/24/2023	<p>Case file images</p> <p>1. Joint appendix index of appendix exhibits pursuant to Superior Court Rule 9A(b)(5)(vi) (54.4)</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		 <a href="#">Image</a>
02/24/2023	<p>Case file images</p> <p>1. Correspondence from Petrini &amp; Assoc. re: outstanding issues (55)</p> <p>2. Plaintiff Town of Holden's assented-to motion to confirm tracking order deadlines (56)</p> <p>3. Order re: Town of Holden's assented to motion to confirm tracking order deadlines (57)</p> <p>4. Motion to change tracking order deadlines by all parties (58)</p> <p>5. Order re: Town of Holden's motion to change tracking order deadlines (59)</p> <p>6. Order following status conference (60)</p> <p><b>*PREVIOUSLY SCANNED PLEADINGS*</b></p>		 <a href="#">Image</a>
02/24/2023	<p>Case file images</p> <p>1. Correspondence from Petrini &amp; Assoc. requesting leave to file a memorandum of law in support of DCR's motion for summary judgment (61)</p> <p>2. City of Worcester's motion for leave to disclose expert beyond deadline (62)</p> <p>3. Plaintiff Town of Holden's opposition to Worcester's motion for leave to disclose expert beyond deadline (62.1)</p> <p>4. Request for hearing (62.2)</p> <p>5. City of Worcester's certificate of notice of filing Rule 9A package (62.3)</p> <p>6. City of Worcester's document listing per Superior Court Rule 9A (62.4)</p> <p>7. Correspondence from Petrini &amp; Assoc. requesting leave to file a memorandum of law in support of Holden's forthcoming opposition to Worcester's motion or summary judgment (63)</p> <p>8. Plaintiff Town of Holden's opposition to request of Defendant Department of Conservation and Recreation's request to submit reply memorandum in excess of five pages in length (63.1)</p> <p>9. Notice of appearance of Katherine B. Dirks for Defendant, Department of Conservation and Recreation</p> <p>10. Department of Conservation and Recreation's request for leave to file a reply of up to 12 pages (64)</p>		 <a href="#">Image</a>

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	<p>11. Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (65)</p> <p>12. Memorandum of law in support of Holden's motion for summary judgment on Worcester's counterclaims (65.1)</p> <p>13. City of Worcester's opposition to Holden's motion for summary judgment as to Worcester's counterclaims (65.2)</p> <p>14. Plaintiff Town of Holden's reply to Defendant City of Worcester's opposition to Town's motion for summary judgment as to Worcester's counterclaim (65.3)</p> <p>15. Parties consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (65.4)</p> <p>16. Joint Appendix for Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (65.5)</p> <p>*not scanned, bound volume*</p> <p>17. Notice of filing pursuant to Superior Court Rule 9A (65.6)</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		
02/24/2023	<p>Case file images</p> <p>1. Plaintiff Town of Holden's motion for summary judgment as to Holden's claims (66)</p> <p>2. Memorandum of law in support of Plaintiff Town of Holden's motion for summary judgment as to Holden's claims (66.1)</p> <p>3. City of Worcester's opposition to Holden's motion for summary judgment as to Holden's claims (66.2)</p> <p>4. Department of Conservation and Recreation's opposition to Town of Holden's motion for summary judgment as to Holden's claims (66.3)</p> <p>5. Holden's reply to City of Worcester's opposition to Holden's motion for summary judgment as to Holden's claims (66.4)</p> <p>6. Holden's reply to DCR's opposition to the Town of Holden's motion for summary judgment as to Holden's claims (66.5)</p> <p>7. Defendant's motion to strike a portion of Plaintiff's statement of facts (67)</p> <p>8. Plaintiff Town of Holden's opposition to Defendant DCR's motion to strike a portion of Plaintiff's statement of facts (67.1)</p> <p>9. City of Worcester's notice of joinder of DCR's motion to strike portions of Holden's statements of fact (67.2)</p> <p>10. Plaintiff Town of Holden's motion to strike certain Defendant City of Worcester statements of fact, supporting exhibit and portions of Worcester's memorandum of law in opposition to Holden's motion for summary judgment (68)</p> <p>11. City of Worcester's opposition to Plaintiff's motion to strike the markus affidavit and Worcester's cross-motion to strike (68.1)</p> <p>12. Parties consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to Holden's claims (69)</p> <p>13. Joint Appendix for Plaintiff Town of Holden's motion for summary judgment as to Holden's Claims, Volume I (70)</p> <p>*not scanned, bound volume*</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		 <a href="#">Image</a>
02/24/2023	<p>Case file images</p> <p>1. Notice of filing pursuant to Superior Court Rule 9A (71)</p> <p>2. Department of Conservation and Recreation's motion for summary judgment (72)</p> <p>3. Affidavit of Assistant Attorney General Andrew W. Koster in support of Department of Conservation and Recreation's motion for summary judgment (72.1)</p> <p>4. Memorandum in support of Department of Conservation and Recreation's motion for summary judgment (72.2)</p> <p>5. Plaintiff Town of Holden's opposition to Defendant Department of Conservation and Recreation's motion for summary judgment (72.3)</p> <p>6. Affidavit of Christopher L. Brown in support of Plaintiff Town of Holden's oppositions to Defendants' motions for summary judgment (72.4)</p> <p>7. Memorandum of law in support of Plaintiff Town of Holden's opposition to Defendant Department of Conservation and Recreation's motion for summary judgment (72.5)</p> <p>8. DCR's reply in support of its motion for summary judgment (72.6)</p> <p>9. Department of Conservation and Recreation's statement of material facts (72.7)</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		 <a href="#">Image</a>
02/24/2023	<p>Case file images</p> <p>1. Defendant's motion to strike a portion of Town of Holden's additional material facts (73)</p> <p>2. Plaintiff Town of Holden's motion to strike certain Defendant Department of Conservation and Recreation statements of fact and supporting exhibits to Defendant Department of Conservation and Recreation's motion for summary judgment (74)</p> <p>3. Defendant Department of Conservation and Recreation's opposition to Plaintiff's motion to strike certain statements of fact and supporting exhibits to DCR's motion for summary judgment (74.1)</p> <p>4. 9A list of documents (74.2)</p> <p>5. Notice of filing (74.3)</p> <p>6. City of Worcester's motion for summary judgment (75)</p> <p>7. Memorandum of law in support of Defendant City of Worcester's motion for summary judgment (75.1)</p> <p>8. Plaintiff Town of Holden's opposition to Defendant City of Worcester's motion for summary judgment</p>		 <a href="#">Image</a>



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	<p>(75.2)</p> <p>9. Memorandum of law in support of Plaintiff Town of Holden's opposition to Defendant City of Worcester's motion for summary judgment (75.3)</p> <p>10. City of Worcester's reply to Holden's opposition to Worcester's motion for summary judgment (75.4)</p> <p>11. City of Worcester's statement of undisputed material facts (75.5)</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		
02/27/2023	<p>Case file images</p> <p>1. Plaintiff Town of Holden's motion to strike certain Defendant City of Worcester statements of fact and supporting exhibits to Defendant City of Worcester's motion for summary judgment (76)</p> <p>2. City of Worcester's opposition to Plaintiff's motion to strike certain statements of fact and supporting exhibits to Worcester's motion for summary judgment and Worcester's cross-motion to strike (76.1)</p> <p>3. City of Worcester's document listing per Superior Court Rule 9A (76.2)</p> <p>4. City of Worcester's certificate of notice of filing Rule 9A package (76.3)</p> <p>5. Joint Appendix for the Department of Conservation and Recreation and City of Worcester's motions for summary judgment, Volume 1 (77) *not scanned, bound copy*</p> <p>Volume 2 (77) *not scanned, bound copy*</p> <p>6. Holden's opposition to DCR's motion to strike a portion of Town of Holden's additional material facts with Exhibits A and B (78)</p> <p>7. Holden's opposition to City of Worcester's cross motion to strike and reply to City of Worcester's opposition to Plaintiff's motion to strike certain statements of fact and supporting exhibits to Worcester's motion for summary judgment (79)</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		 <a href="#">Image</a>
02/27/2023	<p>Case file images</p> <p>1. Holden's opposition to Worcester's cross-motion to strike and reply to City of Worcester's opposition to Plaintiff's motion to strike the markus affidavit and markus opinion materials (80)</p> <p>2. Holden's opposition to City of Worcester's notice of joinder to DCR's motion to strike portions of Holden's statement facts (81)</p> <p>3. DCR's motion for leave to file an amended answer (82)</p> <p>4. Plaintiff Town of Holden's opposition to DCR's motion for leave to file an amended answer (82.1)</p> <p>5. 9A list of documents (82.2)</p> <p>6. Joint motion to continue pre-trial conference (83)</p> <p>7. Notice of withdrawal for Brian A. Schwartz for Defendant, City of Worcester</p> <p><b>*PREVIOUSLY FILED PLEADINGS*</b></p>		 <a href="#">Image</a>
04/10/2023	<p>Endorsement on Motion for Award of Prejudgment Interest and Costs (#197.0): Other action taken See decision of Judge Manitsas dated 4/10/23. Notices mailed 4/19/23</p> <p>Judge: Manitsas, Hon. James M</p>		 <a href="#">Image</a>
04/10/2023	<p>ORDER: DECISION ON PLAINTIFF'S MOTION FOR AWARD OF PREJUDGMENT INTEREST- (See Order) Copies mailed 4/19/23</p> <p>Judge: Manitsas, Hon. James M</p>	198	 <a href="#">Image</a>
04/10/2023	<p>ORDER: DECISION ON PLAINTIFF'S MOTION FOR TAXATION OF COSTS- (See Order) Copies mailed 4/19/23</p> <p>Judge: Manitsas, Hon. James M</p>	199	 <a href="#">Image</a>
04/26/2023	<p>ORDER: ENTRY OF FINAL JUDGMENT- (See Judgment) Entered and Copies mailed 4/26/23</p> <p>Judge: Manitsas, Hon. James M</p>	200	 <a href="#">Image</a>
05/15/2023	<p>Notice of appeal filed. (E-FILED)</p> <p>Applies To: Angelini, Esq., Michael P (Attorney) on behalf of City of Worcester, Department of Conservation and Recreation (Defendant); Bartholomew, Esq., Andrew (Attorney) on behalf of City of Worcester (Defendant)</p> <p>(notices with notice of appeal mailed 5/18/2023)</p>	201	 <a href="#">Image</a>
05/24/2023	<p>Notice of appeal filed (E-FILED)</p> <p>Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff); Terry, Esq., Michael K (Attorney) on behalf of Town of Holden (Plaintiff); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff)</p> <p>(notices with copy of notice of appeal mailed 5/25/2023)</p>	202	 <a href="#">Image</a>
05/30/2023	<p>CD of Transcript of 07/25/2022 09:00 AM Jury Trial, 07/26/2022 09:00 AM Jury Trial, 07/27/2022 09:00 AM Jury Trial, 07/28/2022 09:00 AM Jury Trial, 08/01/2022 09:00 AM Jury Trial, 08/02/2022 09:00 AM Jury Trial, 08/04/2022 09:00 AM Jury Trial received from Bay State Reporting Agency.</p>	203	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/30/2023	Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that all transcripts have been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).		
05/30/2023	Defendant City of Worcester's Notice of ordering all trial transcripts in this matter that have not already been delivered to the clerk (8/3/2022)	204	 <a href="#">Image</a>
06/01/2023	CD of Transcript of 07/12/2022 02:00 PM Final Trial Conference, 07/25/2022 09:00 AM Jury Trial, 08/02/2022 09:00 AM Jury Trial, 08/03/2022 09:00 AM Jury Trial received from Raymond F. Catuogno, Jr.	205	
06/05/2023	Plaintiff Town of Holden's Notice of Certification Pursuant to Mass. R.A.P. 8 and 9 that all transcripts which the Plaintiff deems necessary for determination of the appeal have been filed with the court  Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff); Terry, Esq., Michael K (Attorney) on behalf of Town of Holden (Plaintiff); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff)	206	 <a href="#">Image</a>
06/28/2023	Notice of assembly of record sent to Counsel	207	 <a href="#">Image</a>
06/28/2023	Appeal: Statement of the Case on Appeal (Cover Sheet).	208	 <a href="#">Image</a>
06/29/2023	Docket Note: Assembly of record on appeal transmitted to Appeals Court (8822)		<a href="#">Image</a>
07/12/2023	Appeal entered in Appeals Court on 07/12/2023 docket number 2023-P-0794	209	 <a href="#">Image</a>
07/12/2023	Appeal entered in Appeals Court on 07/12/2023 docket number 2023-P-0795	210	 <a href="#">Image</a>
08/02/2023	Party(s) file Stipulation pursuant to Mass. R. App. P. 8(e)(1) to add transcript of November 2, 2022, to record on appeal  Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff); Terry, Esq., Michael K (Attorney) on behalf of Town of Holden (Plaintiff); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff); Angelini, Esq., Michael P (Attorney) on behalf of City of Worcester (Defendant); Dirks, Esq., Katherine B (Attorney) on behalf of Department of Conservation and Recreation (Defendant); Bartholomew, Esq., Andrew (Attorney) on behalf of City of Worcester (Defendant)	211	 <a href="#">Image</a>
08/02/2023	Transcript received of November 2, 2022, hearing (CD)	212	
Showing 501 to 575 of 575 <a href="#">&lt;&lt;</a> <a href="#">≤</a> <a href="#">1</a> <a href="#">2</a> <a href="#">&gt;&gt;</a>			

## **EXHIBIT B**

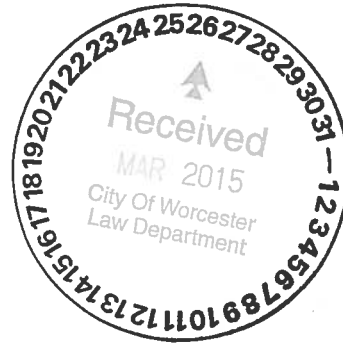


**Commonwealth of Massachusetts  
County of Worcester  
The Superior Court**

CIVIL DOCKET#: **WOCV2013-00910-D**

RE: Holden v Conservation and Recreation et al

TO: Wendy L Quinn, Esquire  
Worcester Law Dept (City of)  
455 Main Street  
Room 301  
Worcester, MA 01608



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**NOTICE OF DOCKET ENTRY**

You are hereby notified that on **03/23/2015** the following entry was made on the above referenced docket:

**MEMORANDUM OF DECISION AND ORDER ON WORCESTER'S MOTION FOR JUDGMENT ON THE PLEADINGS - For the foregoing reasons, the Defendant's Motion for Judgment on the Pleadings is DENIED. (Shannon Frison, Justice) Entered and Copies mailed 3/23/15**

Dated at Worcester, Massachusetts this 23rd day of March, 2015.

Dennis P. McManus, Esq.,  
Clerk of the Courts

BY: Matthew S. Lefebvre  
Assistant Clerk

Telephone: 508-831-2351 (Session Clerk) or 508-831-2350

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO.2013-00910-D

TOWN OF HOLDEN  
plaintiff

vs.

DEPARTMENT OF CONSERVATION AND RECREATION  
and the CITY OF WORCESTER  
defendants

MEMORANDUM OF DECISION AND ORDER ON WORCESTER'S MOTION FOR  
JUDGMENT ON THE PLEADINGS

INTRODUCTION

This is an action for declaratory relief, statutory violations, breach of contract, unjust enrichment, and violation of the Public Records Law, arising out of allegedly excessive sewage transport fees charged to the plaintiff Town of Holden for the transport of Holden's sewage through Worcester to the Upper Blackstone Water Pollution Abatement District. This matter is before the court on defendant City of Worcester's Motion for Judgment on the Pleadings on all claims raised against Worcester in Holden's First Amended Complaint. For the reasons set forth below, Worcester's motion is DENIED on all relevant counts.

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FACTUAL BACKGROUND

The plaintiff's First Amended Complaint ("Complaint") and attached exhibits establish the following facts. In the mid-1930s, a predecessor agency to the Department of Conservation and Recreation, the Metropolitan District Water Supply Commission (which later became and will hereinafter be referred to as the Metropolitan District Commission, or "MDC") constructed a

sewer pipe known as the "Rutland-Holden Interceptor" to convey sewage from the towns of Rutland and Holden to the Holden-Worcester boundary, to be deposited into Worcester's sewer system and treated in Worcester's sewage treatment plant. In 1933, the MDC entered into a contract with Worcester ("Contract No. 42"), under which the MDC agreed to annually pay Worcester "a proportionate share of the cost of cleaning and repairing [Worcester's] sanitary sewers . . . and operating [Worcester's] sewage treatment plant in the ratio which the quantity of sewage from [the Rutland-Holden Interceptor] at the Holden-Worcester line bears to the total quantity of the sewage treated by [Worcester] at its treatment plant."

A sample calculation included in Contract No. 42 showed that the MDC's obligation to pay its "proportionate share" of costs related only to the parts of Worcester's sewer system that actually carried wastewater flow from the Rutland-Holden Interceptor. The contract also provided that if the annual flow of sewage from the Interceptor exceeded the annual average of \$750,000 contemplated by the contract, "such adjustment shall be made [in the agreement] as will compensate [Worcester] for the increased sewerage capacity required . . . ."

In 1938, the MDC entered into a contract with Holden ("Contract No. 69"), under which the MDC passed along to Holden its proportionate share of the costs paid to Worcester under Contract No. 42. Specifically, Contract No. 69 provides in pertinent part that "[Holden] agrees to pay the [MDC] annually its proportionate share of the cost of cleaning and repairing the . . . sanitary sewers of the City of Worcester and operating the sewage treatment plant of said City", and provides that the "proportionate share" is to be determined by "the proportion of the amount paid by the [MDC] to the City of Worcester . . . which the amount of sewage delivered to the trunk sewer of the [MDC] by [Holden] . . . bears to the total amount of sewage delivered to the

sewerage system of the City of Worcester by the [MDC] at the measuring station at the Holden-Worcester town line.”

Contract No. 69 references Contract No. 42, stating that “[the MDC] agrees . . . to pay the City of Worcester, annually, in accordance with the terms of a contract, No. 42 . . . its proportionate share of the cost of cleaning and repairing the sanitary sewers of the City of Worcester and operating the sewage treatment plant of said City.” The Legislature incorporated Contract No. 69 in Chapter 286 of the Acts of 1939, stating that “[Holden] shall annually reimburse the [MDC], or its successor, its proportionate share of the cost to [the MDC], or its successor, of receiving, caring for and disposing of said sewage, under the terms and conditions of [Contract No. 69].”

In 1968, the Legislature created the Upper Blackstone District, which assumed operation of Worcester’s sewage treatment facility. The plant has since been updated several times.

In the late 1970s and early 1980s, pursuant to authority granted it by Chapter 798 of the Acts of 1979, the MDC constructed a second interceptor parallel to the Rutland-Holden interceptor, “to accommodate increased sewage flow and address problems with infiltration and inflow.”

Worcester changed the method for calculating the rate chargeable to the MDC in 1980 and again in 1990; Holden paid the new rates, though it never signed amendments to Contract No. 69 incorporating new rate-calculation methods. In the late 1990s, the MDC oversaw a multiple year negotiation among Worcester, the MDC, Rutland, Holden, and West Boylston. These negotiations resulted in a May 2000 sewer use agreement between Worcester and the MDC (“Worcester-MDC SUA”), which set forth yet another new rate calculation methodology

(“May 2000 rate”), and “terminate[d] the provisions of all prior agreements [between Worcester and the MDC] relating to sewer capacity, connections and costs thereof.”

Prior to the execution of the Worcester-MDC SUA, Holden had signed an agreement with the MDC promising “to pay directly to the Metropolitan District Commission all proportionate applicable transport costs (as finally determined and agreed to by Holden) for the transport of sewage through the Rutland-Holden Sewer System to the [Upper Blackstone Water Pollution and Abatement District], including the costs of sewage transport through the City of Worcester.”

However, once Worcester and the MDC signed their sewer use agreement, Holden refused to execute a parallel sewer use agreement with the MDC incorporating the May 2000 rate, and objected in writing to the rate, issuing its sewer payments “wholly under protest.”

The May 2000 rate passes along costs to Holden which Holden claims are unrelated to its use of the sewer system, such as storm water management costs and certain capital costs. 50% of the sewer use charge assessed to Holden is comprised of charges for Worcester’s municipal separate storm system (“MS4”) and sewer debt costs. Storm water discharges from Worcester’s MS4 are covered by a permit issued by the EPA; it is estimated that it will cost Worcester \$1.2 billion to comply with the likely requirements of a permit that will be issued in the near future, and Worcester has informed Holden that this cost will be passed along to ratepayers. Holden maintains its own MS4.

Holden alleges that it has no viable alternative means of disposing of its sewage.

Holden also alleges that on March 29, 2013, it presented Worcester with a public records request, and that Worcester failed to respond as required by Massachusetts law. After filing its

First Amended Complaint, Holden moved for partial summary judgment on its public records claim; the court denied the motion, ordering Worcester to respond. Worcester sent a letter in response.

## DISCUSSION

### A. Standard of Review

“A motion for judgment on the pleadings is actually a motion to dismiss that argues that the complaint fails to state a claim upon which relief can be granted.”

Iannacchino v. Ford Motor Co., 451 Mass. 623, 625 n.7 (2008) (internal quotes, citations, and alterations omitted). “In considering such a motion, ‘the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor, are to be taken as true.’” Id., quoting Nader v. Citron, 372 Mass. 96, 98 (1977). The court may also consider “matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint.” Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000). For a complaint to survive a motion for judgment on the pleadings, its factual allegations must “plausibly suggest” an entitlement to relief. See Iannacchino, 451 Mass. at 636, quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 548 (2007).

### B. Application of the Standard

Holden’s complaint sets forth five claims against Worcester: Declaratory Judgment (Count One), Violation of Chapter 286 of the Acts of 1939 (Count Two), Unjust Enrichment (Count Four), Unconstitutional Tax (Count Five), and Violation of G. L. c. 66, § 10 (Count Six).

*1. Declaratory Judgment (Count One)*

In Count One, Holden requests that the Court “determine and establish a proportionate and proper sewage transport rate formula that is consistent with the applicable governing statutes [sic] and contracts”, and asks that, in so doing, “the Court determine and order that the rates presently charged to Holden constitute an impermissible fee or unconstitutional tax, and that Worcester and the DCR are barred from charging Holden for Worcester sewer system expense items such as costs relating to the Worcester MS4, storm water management and capital costs that are in violation of Chapter 286 of the Acts of 1939, Contract No. 69. Contract No. 42 and/or the 1999 Agreement.” Complaint at 49. In its prayer for relief, Holden reformulates its request under Count One in slightly different language, asking that the court declare “a proportionate and cost based sewage transport rate, and in so doing declare that Worcester and the DCR are barred from charging Holden for costs relating to the Worcester MS4, storm water management, capital costs, and any costs that are other than those costs directly related to the operation and maintenance of the sewer line that conveys sewage from the Rutland-Holden Interceptor and Relief Interceptor through Worcester to the UBWPAD.” Basing its analysis on the latter formulation, and noting that it will address the unconstitutional tax allegation in its discussion of Count Five, the court concludes that Holden has pled facts plausibly suggesting an entitlement to its requested relief.

As the court will discuss in greater detail further below, it does appear that the relevant statute and contracts may technically require that Holden be charged only for costs directly related to the operation and maintenance of the particular sewer line that transports Holden’s

sewage. However, the pleadings demonstrate that Worcester's sewer system has undergone fairly significant changes since the 1930s, and there is no suggestion that the parties are barred from negotiating new rates that take such changes into account. Worcester claims that "since 1933 the operation of a sewer system has been transformed by . . . the recognition that sanitary sewers are substantially and negatively affected by the stormwater sewers located in the ground next to the sanitary sewer." Def. Memo at 14. If, at a later stage of proceedings, Worcester is able to convincingly demonstrate that the stormwater management costs (including MS4 costs) and capital costs of which Holden complains do relate to the transport of Holden's sewage, and that limiting charges "to those costs directly related to the operation and maintenance of the sewer line that conveys [Holden's sewage through Worcester]" would not adequately compensate Worcester for the costs of handling Holden's sewage, issuing the declaration that Holden seeks would not be equitable. However, Holden has pled facts plausibly suggesting that storm water treatment costs and capital costs are unrelated to Holden's use of Worcester's sewers, and that the current rate thus grossly misrepresents the cost to Worcester of transporting Holden's sewage. A thorough inquiry into the facts of this case is necessary before the court may properly establish a new rate or otherwise make a declaration in favor of either party. Worcester's Motion for Judgment on the Pleadings is therefore denied as to this count.

## *2. Violation of Chapter 286 of the Acts of 1939 (Count Two)*

On this count as well, Holden has pled facts plausibly suggesting an entitlement to relief. The town claims that "Chapter 286 of the Acts of 1939 and the contracts incorporated by reference therein . . . require that the Defendants' charges to Holden be *proportionate*, calculated via a simple mathematical division in which Holden's total flow constitutes the numerator, and



the total flow deposited by Worcester's sewer pipes into the UBWPAD constitutes the denominator . . . the statute and contracts [also] prohibit the Defendants from charging Holden for any items that are unrelated to the *cleaning and repair* of Worcester's sewer pipes." Complaint at 54. This is largely accurate. Chapter 286 of the Acts of 1939 incorporates Contract No. 69, which states that the MDC, "in accordance with the terms of [Contract No. 42]", and Holden, in turn, are responsible for their proportionate share of cleaning and repairing Worcester's sanitary sewers; and Contract No. 42 sets forth a simple calculation for determining the charges to the MDC. While the statute and contracts do not explicitly *prohibit* the defendants from charging Holden for items other than those relating to cleaning and repair, only cleaning and repair charges appear to be authorized by the agreements. Holden argues Worcester violates Chapter 286 of the Acts of 1939 when it assesses to Holden, through the DCR, charges that are calculated according to a new, more complicated formula, that includes costs for services that fall outside the categories of cleaning and repair, as Holden has never agreed to amend Contract No. 69 to incorporate new rate calculation methods.

Indeed, the new rate includes stormwater management and capital costs, which are unrelated to cleaning and repair and which result in fees to Holden that are allegedly greatly out of proportion with the cost Worcester actually incurs in transporting Holden's sewage. Though Holden signed an agreement with MDC in 1999 that appears to demonstrate that Holden anticipated the future development of a new sewer use rate, and though it has paid the charges assessed to it under the new rate since 2000, when the new rate was introduced in the Worcester-MDC SUA, Holden claims that it "objected in writing to the [May 2000 rate], reserved all rights and issued its sewer payments to the MDC wholly under protest." Complaint para. 24. The facts

as pled suggest that Holden never assented to the new rate, and that the current charges may violate Chapter 286 of the Acts of 1939, because they deviate from the terms of the contracts incorporated therein. Worcester's Motion for Judgment on the Pleadings is therefore denied as to this count.

### *3. Unjust Enrichment (Count Four)*

Holden claims that Worcester has been unjustly enriched by receiving money for services that Holden did not utilize and from which Holden received no benefit. Worcester argues that Holden's unjust enrichment claim must fail as a matter of law, quoting Metro. Life Ins. Co. v. Cotter for the proposition that "a claim of unjust enrichment will not lie where there is a valid contract that defines the obligations of the parties." 464 Mass. 623, 641 (2013) (internal quotes and citation omitted). Count Three of Holden's complaint alleges breach of contract claims against DCR, for allegedly violating the terms of Contract No. 69 and the 1999 agreement; Worcester argues that these claims exemplify the existence of a remedy at law.

There is however no contract directly between Worcester and Holden, and Holden maintains that "Worcester cannot hide behind the Town's contract claim against the DCR to shield itself from the Town's unjust enrichment claim." The court agrees. It is not the existence of *any* contractual remedy that will preclude one party from bringing a claim of unjust enrichment against another party; rather, the contractual remedy must exist between those particular parties. See Biltcliffe v. CitiMortgage, Inc., 772 F.3d 925, 931 (1<sup>st</sup> Cir. 2014) ("Under Massachusetts law, the existence of a contractual relationship *between the parties* typically precludes an unjust enrichment claim *arising out of that contract*." ) (emphases added). Furthermore, given that the court has yet to determine if Holden is entitled to recover on its

breach of contract claims, whether the town has any adequate remedy at law is unclear at present; even assuming that Holden's contract claims against the DCR could eventually preclude the town from recovering on its unjust enrichment claim against Worcester, this court "sees no reason why it should impose [the burden of choosing a theory of recovery]" on Holden at this time. Philip Alan, Inc. v. Sarcia, 2007 Mass. Super. LEXIS 52, 39, 2007 WL 738484 (Mass. Super. Ct. Feb. 6, 2007), citing Sentinel Prods. Corp. v. Mobil Chemical Co., No. 98-11782 (D.Mass. Jan. 2001).

In order to succeed on its claim of unjust enrichment, Holden must establish that it conferred a benefit on Worcester, and that such benefit was unjust. See, e.g., Metro. Life Ins. Co. v. Cotter, 464 Mass. 623, 644 (2013). As discussed above, Holden has pled facts which plausibly suggest it has for a number of years paid Worcester substantially more for the transport of its sewage than it actually costs Worcester to transport said sewage. Therefore, Worcester's Motion for Judgment on the Pleadings is denied as to this count.

#### *4. Unconstitutional Tax (Count Five)*

Holden claims that the sewer use charges assessed to the town constitute "an illegal tax in the guise of a fee." Complaint, para 68. On this count, as well, Holden's complaint survives Worcester's Motion.

"A municipality does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature," Denver St. LLC v. Town of Saugus, 462 Mass. 651, 652 (2012) (internal quotes and citation omitted), but it may lawfully charge fees. Id. In Emerson College v. City of Boston, the Supreme Judicial Court identified several characteristics that distinguish fees from taxes: fees "[1] are charged in exchange for a

particular government service which benefits the party paying the fee in a manner not shared by other members of society . . . [2] are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge . . . and . . . [3] are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.” Id., citing Emerson Coll. v. Boston, 391 Mass. 415, 424-25 (1984).

Holden, whose burden it is to show that the charge is not a lawful fee, see Southview Cooperative Hous. Corp. v. Rent Control Bd., 396 Mass. 395, 403 (1985), claims that the sewer transport charge resembles a tax under the first Emerson factor “because it charges Holden for services that do not benefit the Town at all, such as storm water management costs and unrelated capital costs.” P. Memo at 14. The court disagrees with this conclusion. Worcester charges Holden a sewer use fee in exchange for transporting Holden’s sewage, a government service from which Holden obviously benefits. Whether the fee accurately reflects the cost of providing this service is more appropriately addressed in discussing the third Emerson factor. Under the third factor, “the critical question is whether the charges are reasonably designed to compensate the town for anticipated expenses”, Denver St. LLC, 462 Mass at 661, quoting Southview Coop. Hous. Corp. v. Rent Control Bd. of Cambridge, 396 Mass. 395, 404 (1985) (alterations omitted). The facts as currently pled indicate that the charges are not reasonably designed to align with this purpose.

Holden maintains that the charge resembles a tax under the second Emerson factor as well, arguing that it has no real choice whether or not to utilize Worcester’s sewer system, although no statute explicitly compels it to connect to Worcester’s sewers. For all practical purposes, this may well be true. The Supreme Judicial Court has however held that “the element

of choice is not a compelling consideration which can be used to invalidate an otherwise legitimate [fee],” citing a First Circuit case which found that charges “levied on the Navy by environmental authorities in Maine to provide for the safe disposition of hazardous waste” constituted a fee and not a tax, although “[t]here was no way to avoid payment of the charges.” See Nuclear Metals v. Low-Level Radioactive Waste Mgmt. Bd., 421 Mass. at 206, citing Maine v. Department of Navy, 973 F.2d 1007, 1012-1013 (1st Cir. 1992). See also Silva v. City of Attleboro, 454 Mass. 165, 172 (2009) (“Massachusetts cases decided since Emerson College . . . have consistently given less weight to the voluntariness factor.”) It is unclear, at this stage of proceedings, how much weight to assign this factor, as it has yet to be determined whether the sewer use charge otherwise resembles a lawful fee. Holden has pled facts plausibly suggesting that it does not.

*5. Violation of G. L. c. 66, § 10 (Count Six)*

Worcester argues that Count Six, which alleges that the Worcester City Manager and the Department of Public Works & Parks (“DPW&P”) failed to timely respond to Holden’s public records request of March 29, 2013, is now moot, because of events that occurred subsequent to Holden’s filing of its First Amended Complaint. On November 13, 2013, Holden’s partial motion for summary judgment on this count was denied without prejudice by margin endorsement “as not yet ripe for summary judgment,” and Worcester was ordered to respond to Holden’s public records request within two weeks. According to Worcester, DPW&P responded via letter, which “provided Plaintiff with a cost estimate to produce the requested records . . . Plaintiff did not pursue the request or forward payment, electing instead to demand that the record should be produced to Holden at no cost in civil discovery.” This characterization of

events is outside of the pleadings, and in any event, does not establish that the public records claim is moot; thus, Worcester's Motion is denied as to Count Six.

*6. Worcester's Affirmative Defenses*

Worcester argues that Holden's claims are barred on grounds of statute of limitations, laches, and waiver.

It is unclear how Worcester's statute of limitations argument applies here; Worcester raises it to attack a contract action, but no action for breach of contract exists between Holden and Worcester.

Worcester's laches argument turns on the question of whether "there [was] an unjustified, unreasonable and prejudicial delay" in Holden's raising of its claim contesting the current sewer rates, see Weston Forest and Trail Association, Inc. v. Fishman, 66 Mass. App. Ct. 654, 656 (2006), "delay that work[ed] disadvantage" to Worcester. Calkins v. Wire Hardware Co., 267 Mass. 52, 69 (1929). This is a factual issue that cannot be resolved at this stage; the pleadings do not indicate that the delay on Holden's part was unreasonable or prejudicial. Furthermore, the doctrine of laches does not run against a public entity suing to enforce rights that serve a public benefit. See id. at 663, and cases cited. Holden has pled facts suggesting that enforcement of its rights under Chapter 286 of the Acts of 1939 would serve such a benefit.

Finally, as for Worcester's waiver/estoppel by conduct argument, Worcester did not raise this affirmative defense in its answer. Thus, this defense is deemed to have been waived. See Sharon v. City of Newton, 437 Mass. 99, 102 (2002).

**ORDER**

For the foregoing reasons, the Defendant's Motion for Judgment on the Pleadings is DENIED.

A handwritten signature in cursive script, appearing to read "S Frison", written in black ink.

---

Honorable Shannon Frison  
Justice of the Superior Court

Dated: March 3, 2015

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO.2013-00910-D

TOWN OF HOLDEN  
plaintiff

vs.

DEPARTMENT OF CONSERVATION AND RECREATION  
and the CITY OF WORCESTER  
defendants

**OMNIBUS MEMORANDUM OF DECISION AND ORDER ON PARTIES' MOTIONS  
FOR SUMMARY JUDGMENT**

**INTRODUCTION**

The plaintiff, Town of Holden ("Holden"), brought this action for declaratory relief, statutory violations, breach of contract, unjust enrichment, and violation of the Public Records Law arising out of allegedly excessive sewage transport fees charged for the transport of Holden's sewage through the City of Worcester ("Worcester") to the Upper Blackstone Water Pollution Abatement District ("UBWPAD"). Worcester asserts counterclaims against Holden for trespass, nuisance, unjust enrichment, and declaratory judgment. This matter is before the court on the following motions: Holden's motion for summary judgment as to Worcester's counterclaims (Paper # 65); Holden's motion for summary judgment as to its own claims (Paper # 66); Department of Conservation and Recreation's ("DCR") motion for summary judgment as to Holden's claims (Paper #72); and Worcester's motion for summary judgment as to Holden's claims and counterclaims (Paper # 75). For the reasons set forth below, Holden's motions for summary judgment as to Worcester's counterclaims (Paper # 65) will be **ALLOWED**. Holden's motion for summary judgment as to its



claims (Paper # 66) will be **ALLOWED**, in part, and **DENIED**, in part. The DCR's motion for summary judgment as to Holden's claims (Paper #72) will be **ALLOWED**, in part, and **DENIED**, in part. Worcester's motion for summary judgment as to Holden's claims and its counterclaims (Paper # 75) will be **ALLOWED**, in part, and **DENIED**, in part.

### **FACTUAL BACKGROUND**

The following facts, taken from the record, are not disputed.

In the mid-1930s, a predecessor agency to the DCR, the Metropolitan District Water Supply Commission (which later became, and hereinafter will be referred to as, the Metropolitan District Commission, or "MDC"), constructed a sewer pipe known as the "Rutland-Holden Interceptor" ("RHI") to convey sewage from the towns of Rutland and Holden to the Holden-Worcester boundary, to be deposited into Worcester's sewer system and treated in Worcester's sewage treatment plant. In 1933, the MDC entered into a contract with Worcester ("Contract 42"), under which the MDC agreed to pay Worcester a total of \$325,000. Worcester, in turn, agreed to construct a connecting sewer with the Rutland-Holden Interceptor "capable of conveying, in addition to the contribution of sewage enroute from areas within city limits, a total average flow of 750,000 gallons sewage per day, and adequate to care for such peak flows as may reasonably be expected, to the sewer system of [Worcester] at such a point as the said system will be capable of conveying such sewage to the sewage treatment plant."

A sample calculation included in Contract 42 showed that the MDC's obligation to pay its "proportionate share" of costs related only to the parts of Worcester's sewer system that actually carried wastewater flow from the RHI. The contract also provided that if the annual flow of sewage from the Interceptor exceeded the annual average of \$750,000 contemplated by the contract, "such

adjustment shall be made [in the agreement] as will compensate [Worcester] for the increased sewerage capacity required . . . .”

In 1938, the MDC entered into a contract with Holden (“Contract 69”), under which the MDC passed along to Holden its proportionate share of the costs paid to Worcester under Contract 42. Unlike Contract 42, Contract 69 did not include a capacity limitation. Specifically, Contract 69 provides in pertinent part that “[Holden] agrees to pay the [MDC] annually its proportionate share of the cost of cleaning and repairing the . . . sanitary sewers of the City of Worcester and operating the sewage treatment plant of said City,” further providing that the “proportionate share” is to be determined by “the proportion of the amount paid by the [MDC] to the City of Worcester . . . which the amount of sewage delivered to the trunk sewer of the [MDC] by [Holden] . . . bears to the total amount of sewage delivered to the sewerage system of the City of Worcester by the [MDC] at the measuring station at the Holden-Worcester town line.”

Contract 69 references Contract 42, stating that “[the MDC] agrees . . . to pay the City of Worcester, annually, in accordance with the terms of a contract 42 . . . its proportionate share of the cost of cleaning and repairing the sanitary sewers of the City of Worcester and operating the sewage treatment plant of said City.” The Legislature incorporated Contract 69 in Chapter 286 of the Acts of 1939 (“Chapter 286”), stating that “[Holden] shall annually reimburse the [MDC], or its successor, its proportionate share of the cost to [the MDC], or its successor, of receiving, caring for and disposing of said sewage, under the terms and conditions of [Contract 69].”

In 1968, the Legislature created the Upper Blackstone District, which assumed operation of Worcester’s sewage treatment facility. The plant has since been updated several times.

In 1972, Congress passed the Federal Clean Water Act, 33 U.S.C. § 1251-1387. In 1979, the

Legislature enacted Chapter 798 of the Acts of 1979 (“Chapter 798”) to authorize DCR to install a second interceptor to accommodate increased sewage flow from Holden and Rutland. In the late 1970s and early 1980s, pursuant to authority granted it by Chapter 798, the MDC constructed a second interceptor (the “Relief Interceptor”) parallel to the Rutland-Holden interceptor.

In 1984, the MDC and Worcester entered into an agreement amending Contract 42 relative to the construction of the Relief Interceptor (“1984 Amendment”). The 1984 Amendment does not address the billing methodology between Worcester and the MDC, other than stating that the parties “agree to renegotiate the 1933 Agreement[.]” In the 1984 Amendment, Worcester agreed to “construct a connecting sewer from the [Relief Interceptor] capable of conveying, in addition to the contribution of wastewater from areas within city limits, a total annual average daily wastewater flow of 2.16 million gallons per day [“MGD”] and adequate to handle anticipated peak flows, of 7.16 MGD to the City’s Main Interceptor.” Worcester further expressly agreed in the 1984 Amendment to “reserve adequate capacity to convey a total annual average daily wastewater flow of 2.16 [MGD] and adequate to handle anticipated peak flows of 7.16 [MGD] through the proposed new Northwest Interceptor and through the newly constructed main interceptor . . . to convey wastewater flow from the Rutland-Holden trunk sewer to the [UBWPAD] wastewater treatment plant.”

Officials from both the DCR and Worcester contend that the billing methodology in Contract 42 was changed through an April 21, 1983 letter from William Brutsch (“the Brutsch Letter”), identified therein as the Director and Chief Engineer for the DCR’s Water Division, to Henry Grady, an Assistant City Solicitor for Worcester. The Brutsch Letter indicates that the DCR and Worcester were in agreement “as to the method of calculation to determine Worcester’s charges to the [DCR] for the cost of conveyance and treatment of sewage from Rutland Heights Hospital, Rutland and

Holden.” The letter describes the agreed-upon method as being “based upon Worcester’s Sewer User’s Charge reduced by eliminating Worcester’s debt service, [UBWPAD]’s debt service (if any) and including only the actual costs for planned replacement of critical sewer mains.” Holden paid the new rates, though it never signed amendments to Contract 69 incorporating new rate-calculation methods.

On June 29, 1989, the U.S. Environmental Protection Agency (“EPA”) promulgated the National Primary Drinking Water Regulations, codified at 40 C. F. R. § 141.70, et seq., known as the Surface Water Treatment Rule (“SWTR”). To achieve compliance with the SWTR, the DEP, MDC, and Massachusetts Water Resource Authority (“MWRA”) entered into a Consent Order, dated June 11, 1993, that required the MDC and MWRA to “implement a watershed protection plan for the Wachusett Reservoir.” In turn, the watershed protection plan required the development of a facilities plan (the “Facilities Plan”), which required the installation of new sewers in Holden to address problems associated with failing septic systems.

In the late 1990s, the MDC oversaw a multiple-year negotiation between Worcester, the MDC, Rutland, Holden, and West Boylston. These negotiations resulted in a May 2000 sewer use agreement between Worcester and the MDC (“2000 SUA”), which set forth yet another new rate calculation methodology (“May 2000 Rate”), and “terminate[d] the provisions of all prior agreements [between Worcester and the MDC] relating to sewer capacity, connections and costs thereof.” Prior to the execution of the 2000 SUA, Holden had signed an agreement with the MDC (“1999 Agreement”), promising “to pay directly to the Metropolitan District Commission all proportionate applicable transport costs (as finally determined and agreed to by Holden) for the transport of sewage through the Rutland-Holden Sewer System to the [UBWPAD], including the

costs of sewage transport through the City of Worcester.” However, after Worcester and the MDC signed their sewer use agreement, Holden refused to execute a parallel sewer use agreement with the MDC incorporating the May 2000 Rate, and objected in writing to the rate, issuing its sewer payments “wholly under protest.” Holden claims that the May 2000 Rate passes along costs to Holden which are unrelated to its use of the sewer system, such as storm water management costs and certain capital costs. Fifty percent of the sewer use charge (“Sewer Use Charge”) assessed to Holden is comprised of charges for Worcester’s municipal separate storm system (“MS4”) and sewer debt costs.<sup>1</sup> Storm water discharges from Worcester’s MS4 are covered by a permit issued by the EPA; it is estimated that it will cost Worcester \$1.2 billion to comply with the likely requirements of a permit that will be issued in the near future, and Worcester has informed Holden that this cost will be passed along to ratepayers. Holden maintains its own MS4.

Over the past seventy-five years, Holden’s population has increased. Holden’s sewer system has been expanded multiple times during that span to address the needs of the growing population. These expansions increased the number of parcels in Holden that are connected to the sewer system. They also caused an increased volume of flow. Contract 69 provides that Holden’s sewage is to be treated at Worcester’s treatment facility. Today, however, Holden’s sewage is treated at the UBWPAD. Sewage currently flows through a different trunk sewer, the Relief Trunk sewer, than the one contemplated in Contract 69, the Rutland-Holden trunk sewer. Holden alleges that it has no viable alternative means of disposing of its sewage.

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<sup>1</sup> A MS4 conveys storm water through pipes separate from those used to convey sanitary sewage.

## **DISCUSSION**

### **I. Standard of Review**

Summary judgment is appropriate if the moving party can prove that there are no genuine disputes of material fact and that it is entitled to judgment as a matter of law. Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 (1983). In reviewing a motion for summary judgment, the court views the evidence in the light most favorable to the non-moving party and draws all reasonable inferences in its favor. Jupin v. Kask, 447 Mass. 141, 143 (2006) (citation omitted). Where, as in this case, both sides have filed motions for summary judgment, the court adopts a dual perspective and, for purposes of each motion, views the facts in the light most favorable to the non-moving party. Allstate Ins. Co. v. Occidental Int'l, Inc., 140 F.3d 1, 2 (1st Cir. 1998).

### **II. Analysis**

#### **i. Enforceability of Contract 42 and Contract 69**

The pervasive issue the court must address is the purported enforceability of two contracts between the parties: Contract 42 from 1933 and Contract 69 from 1938. Holden contends that Contract 69 between it and the DCR, which references the agreement in Contract 42 between the DCR and Worcester, governs the present-day obligations with respect to the collection and treatment of Holden's wastewater through Worcester's system. Conversely, the DCR and Worcester maintain that Contract 42 and Contract 69 are no longer in effect, and that the 1983 Brutsch letter demonstrated "regulatory changes required a change in Worcester's sewer rate methodology." The question of whether Contract 42 and Contract 69 remain in effect is one appropriate for this court to resolve on summary judgment. See Targus Group Int'l, Inc. v. Sherman, 76 Mass. App. Ct. 421,

428 (2010).

In resolving this issue, this court adopts the reasoning in Anglo Fabrics v. Webster, 15 Mass. L. Rptr. 233, \*2 (Mass. Super. 2002) (McCann, J.), *aff'd*, 60 Mass. App. Ct. 1117 (Feb.18, 2004) (Rule 1:28 decision). In that case, the court considered the enforceability of an agreement executed in 1972 between a private manufacturing company and the Town of Webster (the “1972 Agreement”), which governed the company’s use of Webster’s upgraded wastewater collection and treatment system. Under the 1972 Agreement, Webster was required to construct a secondary, more advanced wastewater treatment facility, where it would accept and treat the company’s industrial process wastewater.<sup>2</sup> *Id.* at \*3. The company, in turn, agreed to limit the flow of wastewater it deposited into the facility, pay Webster on a monthly basis “for the actual costs of treating the process wastewater,” and pay for a percentage of Webster’s out-of-pocket costs associated with construction of the secondary facility.<sup>3</sup> *Id.* at \*2-3. The 1972 Agreement was silent as to its duration or termination.<sup>4</sup> *Id.* at \*3.

Under the 1972 Agreement, the company was not required to pay Webster for the operation, maintenance, or other costs associated with its wastewater collection system.<sup>5</sup> *Id.* Accordingly, the company did not pay for any operation and maintenance costs under the agreement between 1972 and 1983. *Id.* at \*4. In 1983, however, the company and Webster agreed that the company would

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<sup>2</sup> At some point in the late 1960s, federal and state government environmental agencies required Webster and the company to improve the quality of the wastewater they discharged into a nearby river, prompting the need for a modernized facility to comply with the stricter regulations. *Id.*

<sup>3</sup> In 1971, Webster converted from a tax-based system to a user-fee system for covering the costs of collecting and treating waste in the town. *Id.* at \*2. Prior to the 1972 Agreement, the company paid a user fee to Webster, but only for its domestic wastewater. *Id.* The company did not pay Webster for the industrial process wastewater it discharged into the river. *Id.*

<sup>4</sup> The only language pertaining to duration provided that “said agreement shall be binding upon and inure to the benefit of the respective successors and assigns.” *Id.* at \*3.

<sup>5</sup> The company and Webster executed subsequent amendments to the 1972 Agreement, neither of which imposed an obligation on the company to pay any costs associated with the town’s collection system. *Id.* at \*4. The company did, however, use Webster’s collection system, albeit minimally, for its domestic-use wastewater. *Id.*

begin paying a portion of the operation and maintenance costs associated with Webster's collection system, in the form of an Industrial Collection Charge ("ICC").<sup>6</sup> Id. The parties never amended the 1972 Agreement to include the agreement regarding the ICC. Id. at \*5.

Notwithstanding the implementation of its secondary facility, Webster soon learned that its treatment plant was inadequate to satisfy heightened state and federal water quality requirements.<sup>7</sup> Id. In 1986, after Webster's attempt to remedy such inadequacies failed, the EPA and its Massachusetts counterpart sued Webster for violation of federal and state statutes governing the treatment of wastewater. Id. That litigation resulted in a consent decree, which required Webster and a neighboring town to construct an advanced regional wastewater treatment facility to satisfy the heightened regulations.<sup>8</sup> Id. at \*6. To comply with the consent decree, Webster promulgated a new sewer charge system (the "New Charge System") in 1987. The New Charge System was designed "to equitably distribute capital and operation/maintenance costs" of the regional facility, in addition to the town's collection system. Id. To that end, the new system applied "to all users *in proportion to their actual use* of the new sewer system." Id. (emphasis added).

These developments created an inherent conflict between the 1972 Agreement and the New Charge System. Id. at \*7. Under the New Charge System, the company was charged for a portion of the costs associated with the town's collection system in excess of the amount the company

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<sup>6</sup> The ICC was a fixed percentage charge based on the portion of Webster's collection system that the company used, as well as a portion of the overall cost to treat infiltration and inflow waters that entered the town's collection system through the "interceptor pipe" the company utilized for its wastewater. Id. The agreement regarding the ICC was not reduced to a signed writing. Id.

<sup>7</sup> During the 1980s, "substantial changes" were made to federal laws regulating the treatment of wastewater. Id. In particular, the Clean Water Act, 33 U.S.C. §§ 1251-1387, imposed additional and heightened pretreatment requirements, as well as advanced treat procedures. Id.

<sup>8</sup> The consent decree further required Webster to implement an industrial pretreatment program, and to issue wastewater discharge permits to industrial users, including the company. Id.



previously had agreed to pay in the form of the ICC.<sup>9</sup> Id. As a result, the company “paid for a greater share of the costs associated with the collection system than the share of the collection system [the company] actually used.” Id. at \*9. In 1993, the company advised Webster that it believed the town had violated the 1972 Agreement. Id.

Judge McCann concluded that the 1972 Agreement was unenforceable and void as against public policy. Id. at \*13. The rationale underlying his decision centered around the “[d]ramatically changed circumstances between 1972 and 1987” which the parties could not have foreseen or contemplated. Id. at \*13-14 (“Where the circumstances surrounding the contract are changed, and the parties do not agree upon new consideration, the contract should be considered terminated.”) (citations omitted). In general, those changed circumstances included the “dramatic” changes in federal and state environmental laws, the Consent Decree requiring Webster to upgrade its wastewater treatment facility, and the “large scale” increases in the size of Webster’s overall wastewater collection system. Id. at \*13. The court reasoned that, had Webster known in 1972 of the “vastly changed circumstances” that would occur thereafter, “it ‘would defy common sense to think that the Town would ever have signed [the 1972 Agreement].’” Id. at \*14, quoting State Line Snack Corp. v. Wilbraham, 28 Mass. App. Ct. 717, 720 (1990). For those reasons, the 1972 Agreement no longer governed the parties’ obligations regarding the company’s use of Webster’s wastewater collection system. Id. at \*13.

Here, this court must assess the enforceability of outdated agreements purporting to govern the present-day relationship of entities that operate in a highly regulated, ever-changing industry. In so doing, this court concludes that Contract 42, executed in 1933, and Contract 69, executed in

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<sup>9</sup> The New Charge System also conflicted with the 1972 Agreement in that it provided for proportionate recovery of “infiltration/inflow” costs, which the 1972 Agreement did not. Id.

1938, are unenforceable and void as against public policy. Id. at \*13-14. Akin to the 1972 Agreement at issue in Anglo Fabrics, Contracts 42 and 69 do not contain provisions specifying when such agreements would terminate. Consequently, neither agreement is “presumed to last in perpetuity or for an extended number of years” without a specified duration. Id. at \*10, citing Oak Bluffs v. Cottage City Works Co., 235 Mass. 18, 24 (1920). This court, then, must consider the circumstances surrounding the contracts and relevant developments since their execution. Id. at \*13.

Indeed, the circumstances underlying the relationship between Holden, the DCR, and Worcester, as well as the wastewater collection and treatment industry as a whole, have undergone significant changes since Contract 42 and Contract 69 were executed approximately eighty years ago. Those significant changes include: (I) in 1972, the United States Congress enacted the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq.; (II) in 1979, the Massachusetts Legislature enacted Chapter 798; (III) in the late 1970s to early 1980s, the DCR constructed the Relief Interceptor; (IV) in 1983, the EPA promulgated the National Primary Drinking Water Regulations, 40 C.F.R. §§ 141.70 et seq.; and (V) Holden’s population has increased and its sewer system has been expanded multiple times since 1938. Moreover, the record reveals that Contract 69 “was written to address the needs of a much smaller infrastructure and population in 1938.” These substantial developments closely resemble the changes present in Anglo Fabrics, differing only in that they span a far longer period of time. Id. at \*13-15. For these reasons, this court concludes that Contract 42 and Contract 69 are void and unenforceable as against public policy. Id. at \*13.

2 With this issue addressed, the court turns its attention to the parties’ individual motions.

ii. Holden's Motion for Summary Judgment as to Worcester's Counterclaims (Paper # 65) and Worcester's Motion for Summary Judgment as to its Counterclaims (Paper # 75)<sup>10</sup>

Worcester's counterclaims against Holden for trespass (Count I), nuisance (Count II), unjust enrichment (Count III), and declaratory judgment (Count V) share a common theme in that each of them is generally premised upon the theory that Holden's use of Worcester's wastewater collection system was unauthorized or excessive. As the theory goes, Worcester contends it is entitled to summary judgment on its counterclaims because "Holden is delivering far more sewage than authorized when [Worcester's] system was originated" and because "Holden has been in excess of the capacity [limits] provided by the 1933 Agreement [Contract 42] for decades." Worcester maintains that "accepting this additional flowage is a benefit conferred upon Holden by Worcester."

In assessing Worcester's counterclaims against Holden, the court concludes that Worcester brings them in the nature of recoupment, as a defense to Holden's claims. Recoupment is a common law principle by which a defendant can bring a "claim arising out of the transaction that formed the basis of the plaintiff's claim" as a defense thereto. May v. SunTrust Mortgage, Inc., 467 Mass. 756, 762-763 (2014) (citations omitted). If successful, recoupment operates "to reduce or extinguish the plaintiff's claim, but it [can] not result in an affirmative recovery for the defendant." Bose Corp. v. Consumers Union of U.S., Inc., 367 Mass. 424, 427-428 (1975).

Worcester has made it clear that its counterclaims against Holden, properly understood as recoupment claims, emanate from Contract 42 executed in 1933. In its opposition to Holden's motion for summary judgment as to Worcester's counterclaims (Paper # 65.2), Worcester states that "[the recoupment claims], in essence, claim that if Holden alleges that Contract 42 from 1933 is in

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<sup>10</sup> As the issues raised in Worcester's Paper # 75 are closely interrelated with those that Holden raises in its Paper # 65 seeking summary judgment on Worcester's counterclaims, the court will address them together. Subsequently, the court will address Worcester's Paper # 75 as it relates to Holden's claims.

force and effect, then the 750,000 gallons per day sewage flow limit for both Rutland and Holden, as essential part of that agreement, is also in effect.” Furthermore, in its memorandum of law submitted in support of its motion for summary judgment, Worcester reiterates that “[i]f Holden insists that the 1933 Contract 42 applies, then, likewise, the flow limit provision of that contract also applies, and Holden is liable to Worcester on Worcester’s counterclaim for damages paid due to flows in excess of that limit.” It is evident, therefore, that Worcester’s recoupment claims against Holden are entirely dependent upon the enforceability of Contract 42.

As this court determined above, Contract 42 from 1933 is void and unenforceable as against public policy. Worcester, consequently, has no reasonable expectation of succeeding on its recoupment claims because Holden has no reasonable expectation of succeeding on its claims, to the extent that they are based upon Contract 42 from 1933.<sup>11</sup> See May, 467 Mass. at 762-763. Accordingly, Holden’s motion for summary judgment as to Worcester’s counterclaims in Counts I, II, III, and V will be allowed.

- iii. Holden’s Motion for Summary Judgment as to its Claims against Worcester and the DCR (Paper # 66) and the DCR’s Motion for Summary Judgment as to Holden’s Claims (Paper #72)<sup>12</sup>

Holden moves for summary judgment on the following five counts against Worcester and the DCR: declaratory judgment (Count I); violation of Chapter 286 (Count II); breach of contract against the DCR (Count III); unjust enrichment against Worcester (Count IV); and unconstitutional tax against Worcester (Count V). The DCR opposes and moves for summary judgment on all counts

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<sup>11</sup> As the court is dismissing Worcester’s counterclaims on this basis, it is unnecessary to address the parties’ unrelated arguments.

<sup>12</sup> As the issues raised in the DCR’s motion are closely interrelated with those in that of Holden’s, the court will analyze the issues raised in those motions in one section. For Holden’s motion with respect to the claims against Worcester, this court will address them in the subsequent section addressing Worcester’s motion for summary judgment on the same claims (Paper # 75).

brought against it by Holden.

1. Holden's Claims against the DCR

Holden's First Amended Complaint asserts four counts against the DCR: (1) claim for declaratory judgment; (2) claim for violation of Chapter 286; (3) claim for breach of contract; and (5) unconstitutional tax claim. The court will address each claim in turn.

A. Declaratory Judgment

With regard to the claim for declaratory judgment, Holden asserts that many of the costs passed along to Holden through the May 2000 Rate are not flow proportionate and cover services from which Holden derives no benefit. It refers to "exponentially high charges" for the operation and maintenance of MS4 and capital costs unrelated to the components of the Worcester sewer system used by Holden. Accordingly, it asks that the court: (1) establish a sewer rate consistent with the applicable governing statutes and contracts; (2) declare that the rates charged to Holden "constitute an impermissible fee or unconstitutional tax;" and (3) order that the DCR and Worcester are barred from issuing any charges that are in violation of Chapter 286, Contract 69, Contract 42, and the 1999 Transfer Agreement. The DCR, in its motion for summary judgment, argues that Holden's declaratory judgment claim is barred by the three year statute of limitations, see G. L. c. 260, § 3A, and, alternatively, that the court should exercise its statutory discretion to refuse the entry of declaratory relief.

Holden opposes the statute of limitations argument, stating that it is billed and pays for the transport of its sewage on a quarterly basis for the sewage transported for the prior quarter. Thus, it argues, it has an installment or divisible contract arrangement with the DCR; a separate breach of contract action accrues for each quarterly billing under the relevant contracts. See Chambers v.

Lemuel Shattuck Hosp., 41 Mass. App. Ct. 211, 213 (1996). Our courts describe such circumstance as “what is in reality a rolling statute of limitations.” Callender v. Suffolk County, 57 Mass. App. Ct. 361, 364 (2003). This approach, however, does not negate the statute of limitations as to Holden’s claims beyond the applicable statute of limitations period. See id.; see also Town of Framingham v. Natick Mall LLC, 2011 WL 3524404, \*5-6 (Mass. Super. 2011) (Leibensperger, J.). Adopting Holden’s argument, it has a viable cause of action for the quarterly billings extending back three years prior to the filing of this lawsuit.

The court agrees with the DCR, however, that declaratory relief is inappropriate here. General Laws c. 231A, § 1, authorizes the court to “make binding declarations of right, duty, status and other legal relations,” either “before or after a breach or violation thereof,” “whether any consequential judgment or relief is or could be claimed at law or in equity or not,” provided “an actual controversy has arisen and is specifically set forth in the pleadings.” Section 9 states that its purpose ‘is to remove, and to afford relief from, uncertainty and insecurity with respect to rights, duties, status and other legal relations, and it is to be liberally construed and administered.’ Section 3, however, empowers the court to ‘refuse to render or enter a declaratory judgment of decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons,’ which reasons ‘shall be stated in the record.’” The undersigned concludes that such reasons exist in this case, as the proportionality of the May 2000 Rate is a fact-driven question that cannot be resolved at this stage. Accordingly, the court declines to grant declaratory relief on Holden’s claims. Id.

B. Violation of Chapter 286

Holden alleges that Chapter 286 incorporates Contract 69 and requires the Commonwealth's "charges to Holden be proportionate." It claims that the DCR violated Chapter 286 by demanding non-proportionate payment from Holden. The DCR opposes, claiming that the Legislature did not include a private right of action or waive the Commonwealth's sovereign immunity with respect to Chapter 286. This court agrees that sovereign immunity bars Holden's claim.

"The rules of construction governing waivers of sovereign immunity are stringent." Woodbridge v. Worcester State Hosp., 384 Mass. 38, 42 (1981). "Sovereign immunity bars a private action against a State in its own courts absent consent by the Legislature or abrogation of sovereignty by Congress acting under its Fourteenth Amendment powers . . . Consent to suit must be expressed by the terms of a statute, or appear by necessary implication from them. [W]hen that consent is granted, [the Commonwealth] can be impleaded only in the manner and to the extent expressed in the statute." Lopes v. Commonwealth, 442 Mass. 170, 175-176 (2004) (internal quotations and citations omitted) (alterations in original); Sullivan v. Chief Justice for Admin. & Mgt. of the Trial Court, 448 Mass. 15, 38 (2006) ("[A] clear legislative intent is necessary to infer a private cause of action from a statute." ).

As the DCR correctly points out, Chapter 286 does not express any intent either to waive the Commonwealth's sovereign immunity or to create a cause of action. The fact that Contract 69 is mentioned in the statute does not infer a creation of the private right. "[A] contractual claim does not arise under a statute unless the Legislature has explicitly expressed the intent to waive sovereign immunity and create a contractual remedy." Lopes, 442 Mass. at 178 (internal quotations and

citations omitted) (alteration in original). Rather, the court determines that the mention of Contract 69 suggests that Holden' s remedy would be a breach of contract action. See Loffredo v. Center for Addictive Behaviors, 426 Mass. 541, 546 (1998) (inference of private right of action is disfavored where the statute indicates “ the Legislature’ s contemplation of other remedies” ). As such, summary judgment enters in the DCR’ s favor on Holden’ s claim in Count 11.

C. Breach of Contract

Holden argues that the DCR breached Contract 69 and the 1999 Agreement. As discussed above, Contract 69 is no longer in effect due to dramatically changed circumstances, and thus cannot be the basis for the breach of contract claim. See Anglo Fabrics, 15 Mass. L. Rptr. 233, at \*13-14. As to the breach of the 1999 Agreement, Holden argues that its language, stating that Holden agrees to pay directly to the DCR “ all proportionate applicable transport costs (as finally determined and agreed to by the Town of Holden) for the transport of sewage,” “ reiterated and ratified the proportionality requirement” of the agreements between the parties. By passing on disproportionate sewage transport costs and by failing to obtain its agreement to such costs, the DCR allegedly violated the 1999 Agreement.

The DCR counters that the contract, when read as a whole, does not govern sewer user fees and that nothing in the contract creates an express contractual obligation on behalf of the Commonwealth or requires the Commonwealth to “protect Holden’ s interests.” Rather, it is it nothing more than an agreement to transfer a sewer system.

There is testimony in the record that the 1999 Agreement contemplated that the contemporaneous ongoing negotiations between the parties would result in a Master Sewer Use Agreement (the 2000 SUA), which would govern sewer use charges. Holden never executed the



2000 SUA; however, the DCR continued to pass on the costs through the May 2000 Rate. Whether such charges were proportionate and reflected the parties' expectations is a question of fact, and, therefore, summary judgment is inappropriate on this count.

D. Unconstitutional Tax Claim

Holden alleges that the charges constitute "an unconstitutional tax instead of a permissible fee . . . in violation of the constitutional requirements that taxes be 'proportional and reasonable' in accordance with . . . the Massachusetts Constitution." The DCR argues that Holden's claim that its constitutional rights are violated by the sewer user charges is barred by the Spence doctrine, which prohibits constitutional challenges by government entities to the acts of the Commonwealth. See Spence v. Boston Edison Co., 390 Mass. 604, 610 (1983).

In Spence, the court considered claims brought by the Boston Housing Authority, an entity analogous to a municipal corporation. 390 Mass. at 607-608. The BHA alleged the Department of Public Utilities established rates that "unconstitutionally discriminate[d] against housing authorities." Id. at 610. In so doing, the BHA invoked various constitutional protections, including the Fourteenth Amendment to the United States Constitution, as well as art. 1, 10, and 12 of the Massachusetts Declaration of Rights. Id. at 608. In concluding the BHA was barred from asserting such claims against a department of the Commonwealth, the court held that the BHA could not invoke rights to due process and equal protection of the law because those rights applied "to the *citizens* which may not be infringed by the *government*." Id. (emphasis in original).

Holden alleges that by passing on the Sewer Use Charge to it, the DCR violated "the constitutional requirement that taxes be 'proportional and reasonable' in accordance with Part 11, C. 1, § 1, art. 4, of the Massachusetts Constitution." That provision in the Massachusetts Constitution

authorizes the Legislature “to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth . . . .” Thus, it is apparent that the Spence doctrine bars Holden’s unconstitutional tax claim against the DCR because Holden invokes a constitutional right to which it is not entitled. Id. at 608-610. Just as the BHA in Spence could not avail itself of constitutional rights reserved for “people,” “individual[s],” “persons,” or “citizens,” Holden cannot avail itself of a right that expressly applies to “inhabitants,” “persons resident,” or “estates.” Id. at 608. For that reason, Holden has no reasonable expectation of succeeding on this claim. The court need not determine whether the Sewer Use Charge constitutes a tax or a user fee.

Accordingly, DCR’s motion for summary judgment will be allowed as to Holden’s claim alleging unconstitutional tax.

iv. Worcester’s Motion for Summary Judgment as to Holden’s Claims (Paper # 75)

Worcester moves for summary judgment on the claims Holden asserts against it, including: declaratory judgment (Count I); violation of Chapter 286 (Count II); unjust enrichment (Count IV); unconstitutional tax (Count V); and violation of Public Records Law, G. L. c. 66, § 10 (Count VI).<sup>13</sup>

A. Declaratory Judgment

In this count, Holden requests that this court “determine and establish a proportionate and proper sewage transport rate formula for Holden to pay Worcester that it consistent with the applicable governing statutes [sic] and contracts.” Furthermore, Holden seeks a declaration that “the rates presently charged to Holden constitute an impermissible fee or unconstitutional tax, and that Worcester and the DCR are barred from charging Holden for Worcester sewer system expense items

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<sup>13</sup> Worcester’s motion for summary judgment will be allowed as to Holden’s Count VI, alleging violation of the Public Records Law in G. L. c. 66, § 10, as Holden does not oppose Worcester’s motion in that regard. See Mass. R. Civ. P. 56(e).

such as costs relating to the Worcester MS4, storm water management and capital costs that are in violation of Chapter 286 of the Acts of 1939, Contract 69, Contract 42 and/or the 1999 Agreement.”

For the same reasons as those outlined above with respect to Holden’s claim for declaratory judgment against the DCR, Holden’s claim for declaratory judgment against Worcester cannot be appropriately resolved on summary judgment. See G. L. c. 231A, § 3. Accordingly, Worcester’s motion for summary judgment as to Holden’s declaratory judgment claim against it must be denied.

B. Violation of Chapter 286

Holden alleges that Worcester violated Chapter 286 when it “assessed to Holden, and the DCR [] passed along to Holden, charges that are both non-proportionate and inclusive of cost items such as MS4 and capital costs that are wholly unrelated to the cleaning and repairing of sewer pipes or the transport of Holden’ [sic] sewage.” Worcester contends it is entitled to summary judgment on Holden’s claim for violation of Chapter 286 because it has not violated the statute or any contract incorporated therein. Moreover, Worcester argues that neither Chapter 286 nor Contract 69 imposed a duty on Worcester with respect to Holden. Conversely, Holden asserts that Worcester “is statutorily bound by Chapter 262 of the Acts of 1932, Chapter 286 of the Acts of 1939 and Contract 69 (which has the force of statute by virtue of its incorporation by reference into Chapter 286) to limit its charges for the transport of Holden’s sewage to no more than [Holden’s]” proportionate share of the cost of cleaning and repairing Worcester’s sewer system.

Chapter 286 references Contract 69 between the DCR and Holden, which, in turn, references Contract 42 between the DCR and Worcester. As determined above, Contract 42 and Contract 69 are unenforceable and void as against public policy. Assuming, arguendo, that Contract 42 is enforceable, which it is not, it imposed an obligation on Worcester to accept sewage flows from the

DCR communities, including Holden. Worcester did not owe an obligation directly to Holden under Contract 42 to assess it a proportionate rate; rather, Worcester owed that obligation to the DCR. The obligation to assess Holden in an amount proportionate to its actual use of the Worcester system was solely on the DCR by virtue of Contract 69 and by Chapter 286. There are no words in Chapter 286 from which this court could conclude that the Legislature intended to impose a statutory duty on Worcester with respect to Holden, especially when the statute expressly imposed that duty on DCR alone by its own terms. See Civitarese v. Town of Middleborough, 412 Mass. 695, 700 (1991) (“We will not read into the plain words of a statute a legislative intent that is not expressed by those words.”). Moreover, a statutory duty on Worcester cannot be derived the fact that Chapter 286 makes one reference to Chapter 262.<sup>14</sup> For these reasons, Holden has no reasonable expectation of succeeding on its claim that Worcester violated Chapter 286.

Accordingly, Worcester’s motion for summary judgment as to Holden’s claim against it in this count will be allowed.

C. Unjust Enrichment

Holden alleges that “[b]y receiving money from Holden for services that Holden did not utilize and from which Holden received no benefit, Worcester received money which in equity and good conscience belongs to Holden.” The parties’ arguments on this claim amount to a difference of opinion as to what constitutes a proportionate charge for utilizing Worcester’s wastewater collection system.<sup>15</sup>

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<sup>14</sup> Section 9 of Chapter 262 lends further support for the court’s conclusion, as it provides that “[DCR] is authorized to make such payments and contributions to [Worcester] as shall be mutually agreed upon for the construction by [Worcester] of said sewer within its limits, and for receiving and finally disposing of said sewage.”

<sup>15</sup> Worcester’s assertion in its memorandum of law (Paper # 75.1) that unjust enrichment “is not a viable claim as a matter of law” is unfounded. It is well established that a party may pursue a claim for unjust enrichment. See Fox v. F & J Gattozzi Corp., 41 Mass. App. Ct. 581, 588-589 (1996). Contrary to Worcester’s characterization of the court’s holding in J. A. Sullivan Corp. v. Commonwealth, 397 Mass. 789, 793 (1986), the court stated,

In order to succeed on its claim of unjust enrichment, Holden must establish that it conferred a benefit on Worcester, and that such benefit was unjust. See, e.g., Metropolitan Life Ins. Co. v. Cotter, 464 Mass. 623, 644 (2013). Applying the evidence in the record to that standard, a genuine issue of material fact remains as to whether Worcester was unjustly enriched by Holden's payments. Both Holden and Worcester present conflicting evidence as to the proportionality and reasonableness of Worcester's method for calculating the charges it assesses to the DCR, which the DCR then passes on to Holden for payment. The deposition testimony of Mr. Moylan and Mr. Berg, standing alone, creates an issue of fact that is central to this dispute. The court cannot weigh the apparent differences in opinion as to core facts at this stage of the proceedings, let alone those involving the highly technical and expansive processes here. See Coviello v. Richardson, 76 Mass. App. Ct. 603, 611 (2010); Gilchrist v. Commissioner of Correction, 48 Mass. App. Ct. 60, 65-66 (1999).

Accordingly, the court is unable to resolve such issues of material fact, and Worcester's motion for summary judgment as to Holden's claim for unjust enrichment is denied.

D. Unconstitutional Tax

Holden alleges that by imposing "improper costs upon Holden, Worcester and the DCR have imposed an illegal tax in the guise of a fee." Furthermore, Holden alleges that Worcester's "imposition of these improper, non-proportionate charges for services that Holden does not utilize and that are unrelated to Holden's use of the Worcester sewer system constitutes an unconstitutional tax instead of a permissible fee upon Holden in violation of the constitutional requirement that taxes

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"*Quantum meruit* is a theory of recovery, not a cause of action." *Id.* (emphasis added). The court did not state, as Worcester's memorandum suggests, that a claim of unjust enrichment is not a cause of action. *Id.* Furthermore, Worcester's recycled argument that "[w]ith a claim at law [against DCR in Count III] and a contract covering the subject matter, Holden has no viable claim of unjust enrichment against Worcester" is also unavailing. See Biltcliffe v. CitiMortgage, Inc., 772 F.3d 925, 931 (1st Cir. 2014).

be ‘proportional and reasonable’ in accordance with Part II, C. I, § I, art. 4, of the Massachusetts Constitution.”

It is well settled that “[a] municipality does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature,” Denver St. LLC v. Town of Saugus, 462 Mass. 651, 652 (2012) (internal quotes and citation omitted), but it may lawfully charge fees. Id. The issue here, therefore, is whether the Sewer Use Charge represents an impermissible tax. See Emerson Coll. v. City of Boston, 391 Mass. 415, 424-25 (1984). In Emerson, the Supreme Judicial Court identified several characteristics that distinguish fees from taxes: fees “[1] are charged in exchange for a particular government service which benefits the party paying the fee in a manner not shared by other members of society . . . [2] they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge . . . and . . . [3] the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.” Id. (internal quotes and citation omitted).

Holden, whose burden it is to show that the charge is not a lawful fee, see Southview Cooperative Hous. Corp. v. Rent Control Bd., 396 Mass. 395, 403 (1985), claims that the Sewer Use Charge resembles a tax under the all three of the Emerson factors. In her decision on the motion for judgment on the pleadings, Judge Frison has already found that the first Emerson factor is not satisfied because Worcester charges Holden a sewer use fee in exchange for transporting Holden’s sewage, a government service from which Holden obviously benefits. Whether the fee accurately reflects the cost of providing this service is more appropriately addressed in discussing the third Emerson factor. With regard to the second factor, she found that the “the element of choice is not

a compelling consideration which can be used to invalidate an otherwise legitimate [fee],” see Nuclear Metals v. Low-Level Radioactive Waste Mgmt. Bd., 421 Mass. at 206 (citation omitted); see also Silva v. City of Attleboro, 454 Mass. 165, 172 (2009) (“Massachusetts cases decided since Emerson College . . . have consistently given less weight to the voluntariness factor.”).

As to the third Emerson factor, there remains a genuine issue of material fact as to whether Worcester charges the Sewer Use Charge to raise revenues or to compensate it for providing sewer collection and treatment services. See 391 Mass. at 424-425. Worcester puts forth evidence in the form of deposition testimony from Mr. Berg suggesting that the Sewer Use Charge is a proportionate and reasonable assessment to compensate Worcester for its services in the modern system. Holden, on the other hand, offers competing evidence, including the deposition testimony of Mr. Moylan, that suggests Worcester’s method of calculating the Sewer Use Charge is intended to raise revenues. The court cannot resolve that factual dispute at this stage. See Coviello, 76 Mass. App. Ct. at 607; Gilchrist, 48 Mass. App. Ct. at 65-66. Worcester’s motion for summary judgment as to Holden’s claim alleging unconstitutional tax must be denied.

### **ORDER**

For the foregoing reasons, this court hereby **ORDERS** that:

Holden’s Motion for Summary Judgment as to Worcester’s counterclaims (Paper # 65) is **ALLOWED**.

Holden’s Motion for Summary Judgment as to its claims against DCR (Paper # 66) is **DENIED**. As to Holden’s claims against Worcester (Paper # 66), Holden’s Motion for Summary Judgment is **DENIED**.

The DCR's Motion for Summary Judgment as to Holden's claims (Paper #72) is **ALLOWED**, as to Count II (violation of Chapter 286) and Count V (unconstitutional tax), and is **DENIED**, as to all remaining counts against it.

Worcester's Motion for Summary Judgment as to its counterclaims (Paper # 75) is **DENIED**. As to Holden's claims against it, Worcester's Motion for Summary Judgment (Paper # 75) is **ALLOWED**, as to Count II (violation of Chapter 286), and is **DENIED**, as to all remaining counts against it.



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David A. Ricciardone  
Justice of the Superior Court

Dated: December 29, 2017



COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO.2013-00910-D

TOWN OF HOLDEN  
plaintiff

vs.

DEPARTMENT OF CONSERVATION AND RECREATION  
and the CITY OF WORCESTER  
defendants

**OMNIBUS MEMORANDUM OF DECISION AND ORDER ON PARTIES' MOTIONS  
FOR RECONSIDERATION (P.#'S 85,86, and 87)**

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Each of the three parties involved here have moved for reconsideration of the undersigned's decisions regarding summary judgment.

While each has filed a very articulate and well argued memorandum in support, I cannot conclude that any point of contention is so compelling as to require an altered course.

For example, Holden's principal argument regarding changed circumstances as a question of fact, overlooks the reality that the facts of those changes since 1933 are not in dispute, similar to the situation before the court in Anglo Fabrics. For its part, Worcester argues an overly narrow interpretation of the declaratory judgment statute in the view of the undersigned regarding the effect of the 1999 Agreement. The same is true with regard to DCR in its argument that "proportionate applicable transport costs" is essentially meaningless.

Clearly there are other arguments advanced in each of these motions over the span of some ninety pages, but many are simply retooled from the time of the original hearing, and others were previously unraised, making them unsuitable for reconsideration.

While the parties' laudable but unsuccessful attempt at resolving this case has paused the litigation, it is time for the court to have it resume its path toward trial with the summary judgment decisions intact.

**ORDER**


For the foregoing reasons, this court hereby **ORDERS** that:

The DCR's Motion for Reconsideration of the Order on Summary Judgment (Paper # 85) is **DENIED**.

Holden's Motion for Partial Reconsideration of the Order on Summary Judgment (Paper # 86) is **DENIED**.

Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order (Paper # 87) is **DENIED**.

The court further **ORDERS** that this matter be scheduled for Rule 16 conference within thirty (30) days

  
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David A. Ricciardone  
Justice of the Superior Court

Dated: April 22, 2019

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPT.  
C.A. No. 1385CV00910D

TOWN OF HOLDEN,  
Plaintiff,

v.

DEPARTMENT OF CONSERVATION  
AND RECREATION and CITY OF  
WORCESTER,  
Defendants.

**ENTRY OF FINAL JUDGMENT**

Pursuant to Mass. R. Civ. P. 54, 58 and 77(d), the above-entitled matter having been tried before a jury, the Honorable James M. Manitsas presiding, and the Court having adopted and affirmed the jury's verdict with its Findings of Fact and Rulings of Law dated December 14, 2022 (Paper #188) and its Decision and Order on Cross-Motions for Judgment Notwithstanding the Verdict dated December 20, 2022 (Paper #189),

It is hereby ORDERED and ADJUDGED THAT FINAL JUDGMENT ENTER AS  
FOLLOWS:

1. As to Count One of the First Amended Complaint, Declaratory Judgment, judgment enters for the defendants, City of Worcester and the Department of Conservation and Recreation;
2. As to Count Two of the First Amended Complaint, Breach of Contract, judgment enters for the defendant, Department of Conservation and Recreation;

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3. As to Count Four of the Amended Complaint, Unjust Enrichment, judgment enters for the plaintiff, Town of Holden, in the amount of \$14,604,237.00 against the defendant, City of Worcester;

4. As to Count Five of the First Amended Complaint, Unconstitutional Tax, judgment enters for the City of Worcester (entered upon Directed Verdict motion);

5. That, pursuant to its Bill of Costs, the plaintiff, Town of Holden is further awarded, against the Defendant, City of Worcester, costs incurred during the above-entitled matter in the total amount of \$2,232.83; and

6. That, prejudgment statutory interest of \$11,371,958 shall be added to the jury verdict award of \$14,604,237 through December 31, 2022,<sup>1</sup> as against the City of Worcester.

IT IS SO ORDERED

Dated: 4/24/23

Manitsas J.  
The Honorable James M. Manitsas

Attest: [Signature]

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<sup>1</sup> The judgment is calculated through December 31, 2022. That number should be adjusted upward by \$4801.39 for each day that passes after December 31, 2022, until final judgment is entered.